ED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 31 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TWENTY-ONE FIREARMS AND THIRTY-FOUR ROUNDS OF AMMUNITION,

Defendants.

CIVIL ACTION NO. 86-C-333-E

AMENDED JUDGMENT OF FORFEITURE

Pursuant to the Order of the Court entered herein on August 23, 1988, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendants Twenty-One Firearms and Thirty-Four Rounds of Ammunition, more particularly described in Exhibit "A" attached hereto and against all persons interested in such property, and that the said property be and the same is hereby forfeited to the United States of America.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the United States Marshal shall destroy, retain for official use, or make such other disposition of the Defendant firearms and ammunition as is permitted by law.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, EX REL., OKLAHOMA TURNPIKE AUTHORITY,

Plaintiff,

vs.

MID-WESTERN TRANSPORT, INC., a California Corporation,

Defendant.

Case No. 87-C-64-E

ORDER OF DISMISSAL

Upon the Joint Application and Stipulation of the Plaintiff and Defendant, and each of them to dismiss the Complaint herein and for good cause shown the Court finds that:

1. The Plaintiff's Complaint filed herein should be dismissed by stipulation pursuant to the provisions of Rule 41 (a)(1)(ii) of the Federal Rules of Civil Procedure.

2. That said dismissal is with prejudice and does operate as an adjudication upon the merits of the causes of action contained in said Complaint and further that each party is responsible for their own attorneys fees and costs incurred herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and captioned cause should be and the same is hereby dismissed with prejudice and that the parties herein are responsible for the payment of its own attorneys fees and costs incurred herein.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

BOND, MATTHEWS, BONDS & HAYES

By George Smith
George Smith, OBA #8355
P. O. Box 1906
Muskogee, Oklahoma 74402-1906
(918) 683-2911
ATTORNEYS FOR PLAINTIFF
OKLAHOMA TURNPIKE AUTHORITY

HUCKABY, FLEMING, FRAILEY, CHAFFIN & DARRAH

By Robert L Huckaby
Robert L. Huckaby, OBA #4429
P. O. Box 533
Chickasha, Oklahoma 73023
(405) 224-0237
ATTORNEYS FOR DEFENDANT
MID-WESTERN TRANSPORT, INC.

FILED
OCT 31 1988
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA C. THERKILDSEN, as Personal Representative of William C. Barrows, Jr., Deceased,

Plaintiff,

vs.

ELLSWORTH PAVING & SEALING, INC. an Oklahoma corporation, and DALE EDWARD CLARK, an individual,

Defendants.

No. 87-C-852-B

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This alleged wrongful death action came on for trial before the Court, without a jury, on October 24, 25 and 26, 1988. After consideration of the issues presented, the evidence, arguments of counsel and the applicable law, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff, Barbara C. Therkildsen, a citizen of the State of Illinois, is the duly appointed administratrix of the Estate of William C. Barrows, Jr. ("Barrows") who died on April 18, 1987, as a result of injuries sustained when his motorcycle collided with a dump truck driven by Dale Edward Clark at the intersection of 129th East Avenue and 51st Street in the City and County of Tulsa, Oklahoma.

2. At the time of the collision Dale Edward Clark ("Clark"), a citizen and resident of the Northern District of Oklahoma, was

acting within the scope of his employment as an employee of the Defendant Ellsworth Paving & Sealing, Inc. Clark was driving a 1981 International Harvester dump truck pulling a 30 foot Lowboy equipment trailer, owned by Stroud Oil Reclaiming Company, and operated by the Defendant, Ellsworth Paving & Sealing, Inc.

3. Ellsworth Paving & Sealing, Inc. is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma.

4. The following persons survived the death of William C. Barrows, Jr. ("Barrows"): Mary E. Barrows, widow; Barbara C. Therkildsen, mother; William Clark Barrows, Sr., father; William Shayne Barrows, son; John Christopher Barrows, son; and Elsanne Marie Barrows, daughter.

5. At approximately 8:40 A.M. on the morning of April 18, 1987, Barrows was operating his 1983 Harley Davidson motorcycle in a westerly direction on 51st Street in the City of Tulsa approaching the intersection of 129th East Avenue, which is a signal-lighted intersection. The headlight was lighted on the motorcycle. As Barrows approached the intersection traveling at a lawful rate of speed of approximately 40 to 45 miles per hour, the light turned green when Barrows was some 300 to 400 feet west of the intersection. At the same time the truck-trailer being operated by the Defendant Clark was stopped in the left turn lane headed in the opposite direction going east on 51st Street, preparing to make a left turn to proceed north on 129th East Avenue. For some inexplicable reason Clark did not see the

oncoming Barrows motorcycle and turned directly into the motorcycle's path. By the time Barrows could reasonably conclude that Clark was not going to yield the right-of-way to his oncoming motorcycle, it was too late for Barrows to make an emergency stop without colliding with the truck that had pulled across the motorcycle's path. Under the facts and circumstances facing the motorcycle operator Barrows, he attempted to take reasonable evasive action by speeding up and swerving to the right but this was unsuccessful and the motorcycle came in contact with the left front corner of the truck resulting in Barrows losing control of the motorcycle and being propelled off it for approximately 60 feet in a northwesterly direction near the curb. Barrows' body enroute struck a stopped vehicle that was in the process of making a right turn off 129th East Avenue onto 51st Street. The motorcycle traveled out of control a short distance beyond Barrows' body.

6. Apparently truck driver Clark saw Barrows and the motorcycle instantly before impact as the truck laid down approximately 5 feet of skid marks attempting to stop from its 8 to 10 mile per hour slow rate of speed. From the point of its stop, preparatory to executing a left turn, the truck traveled approximately 50 feet to the point of impact. At the point of impact the left front of the truck encroached upon most of the motorcycle's westbound lane of travel.

7. By turning into the path of the motorcycle being driven by the deceased, Barrows, Clark failed to yield the right-of-way to oncoming traffic.

8. Although the sun was shining on this clear, dry day at an angle of approximately 20° from the horizon, it was not a significant factor in preventing Clark from seeing the oncoming motorcycle.

9. At the time of the collision the power steering on Clark's truck towing the trailer, was inoperable, and this fact was known to both Clark and his employer. Because of the defective power steering considerably greater force had to be applied to the steering wheel to turn the truck (3 pounds vs. 23 pounds). It is probable that in part Clark's inattention to the oncoming motorcycle was due to the extra force necessary to be applied to turn the truck.

10. Barrows experienced no conscious pain and suffering and was pronounced dead at the Saint Francis Hospital in Tulsa, Oklahoma, approximately two and one-half hours following the accident.

11. As a result of the death of William C. Barrows, Jr., his estate incurred funeral bills in the amount of $556.56, medical bills in the amount of $4,209.18, and personal property damage to the motorcycle in the amount of $4,543.00.

12. The following persons, in keeping with 12 Okl.St. Ann. §1053, have experienced damages as set out below as a result of the wrongful death of William C. Barrows, Jr.:

A. Mary E. Barrows, surviving spouse - for pecuniary loss, loss of consortium, and grief in the amount $490,000.00 (out of which is to be paid the previously ordered child support obligation of William C. Barrows, Jr., for and on behalf of his son, John Christopher Barrows, to November 15, 1987,

and for and on behalf of Elsanne Barrows to April 1990. William Shayne Barrows, son of William C. Barrows, Jr., had attained the age of majority prior to his father's death;

B. Barbara C. Therkildsen, mother - grief and loss of companionship - $15,000.00;

C. William Clark Barrows, Sr., father - grief and loss of companionship - $2,500.00.

There was no evidence presented relative to grief and/or loss of companionship of decedent's three surviving children, of whom he no longer had custody as of the date of death, due to a prior divorce.

13. The negligence of the Defendants in failing to yield the right of way to the Plaintiff's decedent's motorcycle was the sole and direct cause of the death of William C. Barrows, Jr. The Plaintiff's decedent was free of negligence relative to the cause of the accident.

14. The decedent, William C. Barrows, Jr., was 38 years of age on the date of his death, April 18, 1987, and had a life expectancy in accordance with accepted mortality tables for a white male of 36 years, 38 days.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter by virtue of diversity of citizenship and the jurisdictional amount pursuant to 28 U.S.C. §1331(a) (c).

2. Any Finding of Fact above which might be properly characterized a Conclusion of Law is to be incorporated herein.

3. The negligent conduct of the Defendants Ellsworth Paving & Sealing, Inc., employer, and Dale Edward Clark, employee, was the sole and direct cause of the wrongful death of the deceased, William C. Barrows, Jr., in the vehicle accident of April 18, 1987. William C. Barrows, Jr., was free of negligence relative to the accident and his resulting death.

4. In failing to yield to the Plaintiff's motorcycle and/or in driving the truck in a defective steering condition, the Defendants violated the following Oklahoma statutes and ordinances of the City of Tulsa: 47 Okl.St.Ann. §851, §11-102, §11-405, §11-604(a), §13-101, and Tulsa Municipal Ordinances, Title 37, §§ 167, 238, 259, 271, and 321.

5. The elements of damage set forth in the Findings of Fact and Conclusions of Law are provided for in 12 Okl.St.Ann. §1053. As there was no pain and suffering experienced by the deceased, such is not a proper element of damages.

6. While the Defendants' conduct constituted negligence, it was not so egregious to be characterized as willful, wanton, grossly negligent or reckless so Plaintiff is not entitled to punitive or exemplary damages as has been alleged herein.

7. A Judgment in keeping with these Findings of Fact and Conclusions of Law shall be entered contemporaneous herewith in favor of Plaintiff, Barbara C. Therkildsen, as Administratrix of the Estate of William C. Barrows, Jr., in the amount of $516,808.74. Said sum shall bear prejudgment interest at the rate of 9.9% per annum interest from October 15, 1987, to the date of

the judgment hereon (12 Okl.St.Ann. §727(A)(2)); and said judgment shall bear interest at the rate of 8.15% per annum following the date of judgment (28 U.S.C. §1961). The Defendants are to pay the costs of the action if timely applied for in keeping with Local Rule 6. As the essence of this case is one for wrongful death pursuant to 12 Okl.St.Ann. §1053, the parties shall pay their own respective attorneys fees.

IT IS SO ORDERED this 31st day of Oct., 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

QUANAH QUINTON,

Plaintiff,

vs.

THE BAPTIST HEALTH CARE CORPORATION, et al.,

Defendants.

No. 87-C-910-E

FILED
OCT 3 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

FILED
OCT 3 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

Defendant Bland is granted judgment against Plaintiff for his costs of this action; Plaintiff's civil rights claim against Defendant Bland is dismissed with prejudice; Plaintiff's pendant state claims are hereby dismissed without prejudice.

IT IS THEREFORE ORDERED that Defendant Bland is granted judgment against Plaintiff for his costs of this action.

ORDERED this 3/st day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMOCO PRODUCTION COMPANY a Delaware corporation, Plaintiff vs. BRITZ KOCHERGEN SECTION 27 DRILLING PROJECT PARTNERSHIP and BRITZ, INC. a California corporation, Defendants.	)	CASE NO. 88-C-328 E

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated that the above entitled action be discontinued and dismissed with prejudice without cost to either party for the reason that Amoco Production Company and Britz Kochergen Section 27 Drilling Project Partnership and Britz, Inc. have entered into a settlement agreement.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

APPROVED:

Tim W. Green

Tim W. Green
1319 Classen Drive
Oklahoma City, Oklahoma 73103
Phone: (405) 236-5109
Attorney for Defendants

Pamela Shelton

James C. Lang, Pamela Shelton
Sneed, Lang, Adams, Hamilton & Barnett
Sixth Floor, 114 East Eighth Street
Tulsa, OK 74119
Attorneys for Plaintiff

Beeks
MRC/cel

FILED

OCT 31 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN EDWARD BEEKS,

Plaintiff,

vs.

CITY OF TULSA; DENNIS LARSEN; DOUGLAS BROWN,

Defendants.

No. 87-C-759-B

ORDER

ON THIS 28 day of October, 1988, the above-styled action comes on before me upon the Report and Recommendation of the United States Magistrate that this action be dismissed for Plaintiff's failure to appear at two additional settlement conferences scheduled on August 25, 1988, and September 21, 1988, pursuant to Rules 16(f) and 37(b)(2)(c).

For good cause shown,

IT IS HEREBY ORDERED that this action be dismissed in accordance with Fed. R. Civ. P. 16(f) and 37(b)(2)(c).

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

FILED
OCT 31 1988 EC
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA C. THERKILDSEN, as Personal Representative of William C. Barrows, Jr., Deceased,

Plaintiff,

vs.

ELLSWORTH PAVING & SEALING, INC. an Oklahoma corporation, and DALE EDWARD CLARK, an individual,

Defendants.

No. 87-C-852-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby granted to the Plaintiff, Barbara C. Therkildsen, as personal representative of William C. Barrows, Jr., Deceased, and against the Defendants, Ellsworth Paving & Sealing, Inc., an Oklahoma corporation, and Dale Edward Clark, an individual, in the amount of Five Hundred Sixteen Thousand Eight Hundred Eight and 74/100 Dollars ($516,808.74), said sum to bear prejudgment interest at the rate of 9.9% per annum from October 15, 1987 to this date (12 Okl.St.Ann. §727(A)(2)), and said judgment to bear postjudgment interest at the rate of 8.15% per annum following this date (28 U.S.C. §1961). The Defendants are to pay the costs of the action if timely applied for by the Plaintiff in accordance with Local Rule 6. This being principally a wrongful

79

death action pursuant to 12 Okl.St.Ann. §1053, the parties shall pay their own respective attorneys fees.

DATED this 31st day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONTINENTAL CARBONIC PRODUCTS, INC., a Delaware Corporation,

Plaintiff,

vs.

TULSA DRY ICE, INC., an Oklahoma corporation, and HODGES QUALITY MEATS INC., an Oklahoma corporation.

Defendants.

No. 87-C-513-E

ORDER OF DISMISSAL

It appearing to the Court that in the above-entitled action, the Defendant Tulsa Dry Ice, Inc. has agreed to dismiss its Counterclaim against the Plaintiff Continental Carbonic Products, Inc., based upon the stipulation heretofore entered into between the parties.

IT IS ORDERED that the Counterclaim of the Defendant Tulsa Dry Ice, Inc. be dismissed under the terms of the stipulation entered into by the parties.

/s/ JAMES O. ELLISON

JUDGE

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

QUANAH QUINTON,

Plaintiff,

vs.

THE BAPTIST HEALTH CARE CORPORATION, et al.,

Defendants.

No. 87-C-910-E

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 31st day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

59

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE CORPORATION, Plaintiff, vs. HOLLAND WELL SERVICE, INC., et al., Defendants.	)	No. 87-C-1002-E

JUDGMENT

1. Judgment is granted in favor of the Plaintiff and against the Defendant Holland Well Service, Inc. on Promissory Note I in the principal sum of $33,384,43 plus interest at the current rate until time of judgment; interest to accrue from this date at the judgment rate of 8.15% and on Promissory Note II in the principal sum of $24,622.50 plus interest at the current rate until time of judgment; interest to accrue from this date at the judgment rate of 8.15%.

2. Judgment is granted in favor of the Plaintiff and against Defendant William R. Holland in the sum of $30,000.00 with interest thereon at the judgment rate of 8.15%.

3. Plaintiff is awarded its costs of this action.

IT IS SO ORDERED.

ENTERED this 31st day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. TED G. PROCTOR; BARBARA A. PAINTER; BANK OF CHELSEA; JOHN DOE, Tenant; COUNTY TREASURER, Creek County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Creek County, Oklahoma, Defendants.	)	FILED OCT 31 1988 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 87-C-1030-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of Oct, 1988. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, appear by Wesley R. Thompson, Assistant District Attorney, Creek County, Oklahoma; Defendant, Bank of Chelsea, appears by its attorney James D. Goodpaster; and Defendants, Ted G. Proctor, Barbara A. Painter, and John Doe, Tenant, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Bank of Chelsea, acknowledged receipt of Summons and Complaint on or about December 29, 1987; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint

on December 10, 1987; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on December 11, 1987.

The Court further finds that the Defendants, Ted G. Proctor, Barbara A. Painter, and John Doe, Tenant, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning July 21, 1988, and continuing to August 25, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Ted G. Proctor, Barbara A. Painter, and John Doe, Tenant, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of Defendants, Ted G. Proctor, Barbara A. Painter, and John Doe, Tenant. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United

States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on December 21, 1987; that the Defendant, Bank of Chelsea, filed its Answer herein on December 28, 1987; and that the Defendants, Ted G. Proctor, Barbara A. Painter, and John Doe, Tenant, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the United States Department of Housing and Urban Development has a lien upon the property by virtue of an assignment from Briercroft Service Corporation on May 14, 1987, to the United States of America, Department of HUD, which was recorded on May 14, 1987, in Book 220 at Page 1607 in the records of Creek County, Oklahoma. Inasmuch as government policy prohibits the joining of another federal agency as party defendant, the Department of Housing and Urban Development was not made a party hereto; however, by agreement of the agencies the lien will be released at the time of sale should the property fail to yield an amount in excess of the debt to the Administrator of Veterans Affairs.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Twenty-two (22), Block Four (4), WOODLAWN ADDITION to the City of Sapulpa, Creek County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 11, 1981, the Defendants, Ted G. Proctor and Barbara A. Painter, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $39,000.00, payable in monthly installments, with interest thereon at the rate of fourteen percent (14%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ted G. Proctor and Barbara A. Painter, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 11, 1981, covering the above-described property. Said mortgage was recorded on May 12, 1981, in Book 100, Page 1452, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Ted G. Proctor and Barbara A. Painter, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ted G.

Proctor and Barbara A. Painter, are indebted to the Plaintiff in the principal sum of $38,899.45, plus interest at the rate of 14 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $295.72, plus penalties and interest, for the year of 1986. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $26.59 which became a lien on the property as of 1986. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Bank of Chelsea, has a lien on the subject property in the amount of $7,322.12, plus interest and costs, by virtue of a real estate mortgage dated February 20, 1986, and recorded on March 6, 1986, in Book 201, Page 1862, in the records of Creek County, Oklahoma.

The Court further finds that the Defendant, John Doe, Tenant, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Ted G. Proctor and Barbara A. Painter, in the principal sum of $38,899.45, plus interest at the rate of 14 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of $295.72, plus penalties and interest, for ad valorem taxes for the year of 1986, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of $26.59 for personal property taxes for the year of 1986, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Bank of Chelsea, have and recover judgment in the amount of $7,322.12, plus interest and costs, by virtue of a real estate mortgage dated February 20, 1986, and recorded on March 6, 1986, in Book 201, Page 1862, in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, John Doe, Tenant, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:
In payment of the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of $295.72, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:
In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:
In payment of the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of $26.59, personal property taxes which are currently due and owing;

Fifth:
In payment of the Defendant, Bank of Chelsea, in the amount of $7,322.12, plus interest and costs.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL
Assistant United States Attorney

WESLEY R. THOMPSON
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

JAMES D. GOODPASTER
Attorney for Defendant,
Bank of Chelsea

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DWIGHT A. MORRISON,

Plaintiff,

vs.

ST. JOHN MEDICAL CENTER, INC.,

Defendant.

No. 86-C-1146-E

ORDER

Before the Court for consideration is the Motion for Judgment Pursuant to Local Rule 15(a) of Defendant, St. John Medical Center, Inc. Being advised in the premises, and for the reasons set forth below, the Court finds that the Motion should be sustained.

On August 30, 1988, Defendant filed its Motion to Tax Attorney's Fees. Plaintiff's response thereto was due on or before September 14, 1988. As of this date, Plaintiff has failed to respond. Pursuant to Local Rule 15(a), Defendant's Motion to Tax Attorney's Fees is deemed confessed.

Further, addressing this motion on the merits the Court finds that from November 19, 1987 forward this case was frivolously maintained. On that date Defendant supplied to Plaintiff evidence which showed that in comparable terminations resulting from the divulging of confidential information, five other persons, both black and white, were fired. Christianburg Garment Co. v. EEOC, 434 U.S. 412 (1978). The Court finds further that $16,664.00 is a reasonable amount to be awarded.

IT IS THEREFORE ORDERED that Defendant's Motion to Tax Attorney's Fees is sustained. Judgment is hereby entered in favor of Defendant against Plaintiff in the amount of $16,664.00.

ORDERED this 28th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

EXHIBIT A

FILED
OCT 31 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNAMETAL INC.,

Plaintiff,

vs.

TOOL SERV, INC.,

Defendant.

Civil Action No. 87-C-319 E

ORDER OF DISMISSAL WITH PREJUDICE

Upon agreement of all parties to entry of this Order, it is hereby

ORDERED, ADJUDGED AND DECREED that all claims and counterclaims in this action are dismissed with prejudice.

Each party shall bear its own costs and expenses of suit.

SIGNED and ENTERED this 31st day of October, 1988, at Tulsa, Oklahoma.

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

N.K. Bridger-Riley
Zarbano & Bridger-Riley
5051 South Lewis, 2nd Floor
Tulsa, Oklahoma 74105

Richard L. Schwartz
Glaser, Griggs & Schwartz
Three Lincoln Centre
5430 LBJ Freeway, Suite 1540
Dallas, TX 75240
(214) 770-2400

Attorneys for Plaintiff Kennametal, Inc.

James R. Head
Fred P. Gilbert
HEAD & JOHNSON, P.A.
228 West 17th Place
Tulsa, Oklahoma 74119

Attorneys for Defendant
Tool Serv, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 31 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

FARMERS INSURANCE COMPANY, INC.,	)	
Plaintiff,	)	
vs.	)	No. 87-C-371-E
ROBERT HASTY, JR., et al.,	)	
Defendants.	)	

JUDGMENT

Judgment is hereby granted in favor of Plaintiff, declaring the limits of the subject policy, relevant to the Defendants is $10,000 per person, $20,000 per accident.

Plaintiff is awarded its costs of this action.

ORDERED this 31st day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

32

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 31 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ERWIN D. PHILLIPS,

Plaintiff,

vs.

LDX, NET, INC.,

Defendant.

No. 87-C-377-E

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 31st day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED
OCT 31 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Oklahoma Bar No. 1518

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

PARADISE PETS, INC., an Oklahoma corporation,

Plaintiff,

vs.

GARY GUNDLACH and JUDY GUNDLACH, d/b/a "THE PET RANCH,"

Defendants.

Case No. 87-C-433-E

ORDER OF DISMISSAL

There comes on before the Court the Joint Application of the parties in the instant case, requesting that this Court enter an Order Of Dismissal.

It appears to the Court from the Application that the parties have fully resolved their differences.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this cause be dismissed with prejudice to the same being refiled.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Michael J. Carson
OBA #1518
Attorney for the Plaintiff
2121 South Columbia
Tulsa, Oklahoma 74114
(918) 743-4717

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE STANDARD OIL COMPANY, Plaintiff v. OSAGE OIL & TRANSPORTATION, INC. Defendant and OSAGE OIL & TRANSPORTATION, INC., and DAVKO, INC., Counterclaimants, v. THE STANDARD OIL COMPANY, Counterdefendant.	)	No. 85-1140-E

FILED

OCT 31 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

For the reasons set forth in the Court's Findings of Fact and Conclusions of Law dated October 11, 1988:

Judgment is hereby rendered in favor of Plaintiff and Counterdefendant, The Standard Oil Company, and against Defendant and Counterclaimant, Osage Oil & Transportation, Inc., and Counterclaimant, Davko, Inc.

The U.S. Trademark Trial and Appeal Board (TTAB) judgment of July 31, 1985 cancelling Standard Oil's U.S. Service Mark Registration No. 979,137 for the mark GAS & GO is reversed and Registration No. 979,137 remains valid and enforceable.

The TTAB's judgment of July 31, 1985 cancelling Standard Oil's U.S. Service Mark Registration No. 841,430 for the mark GAS

89

AND GO is reversed and Registration No. 841,430 remains valid and enforceable.

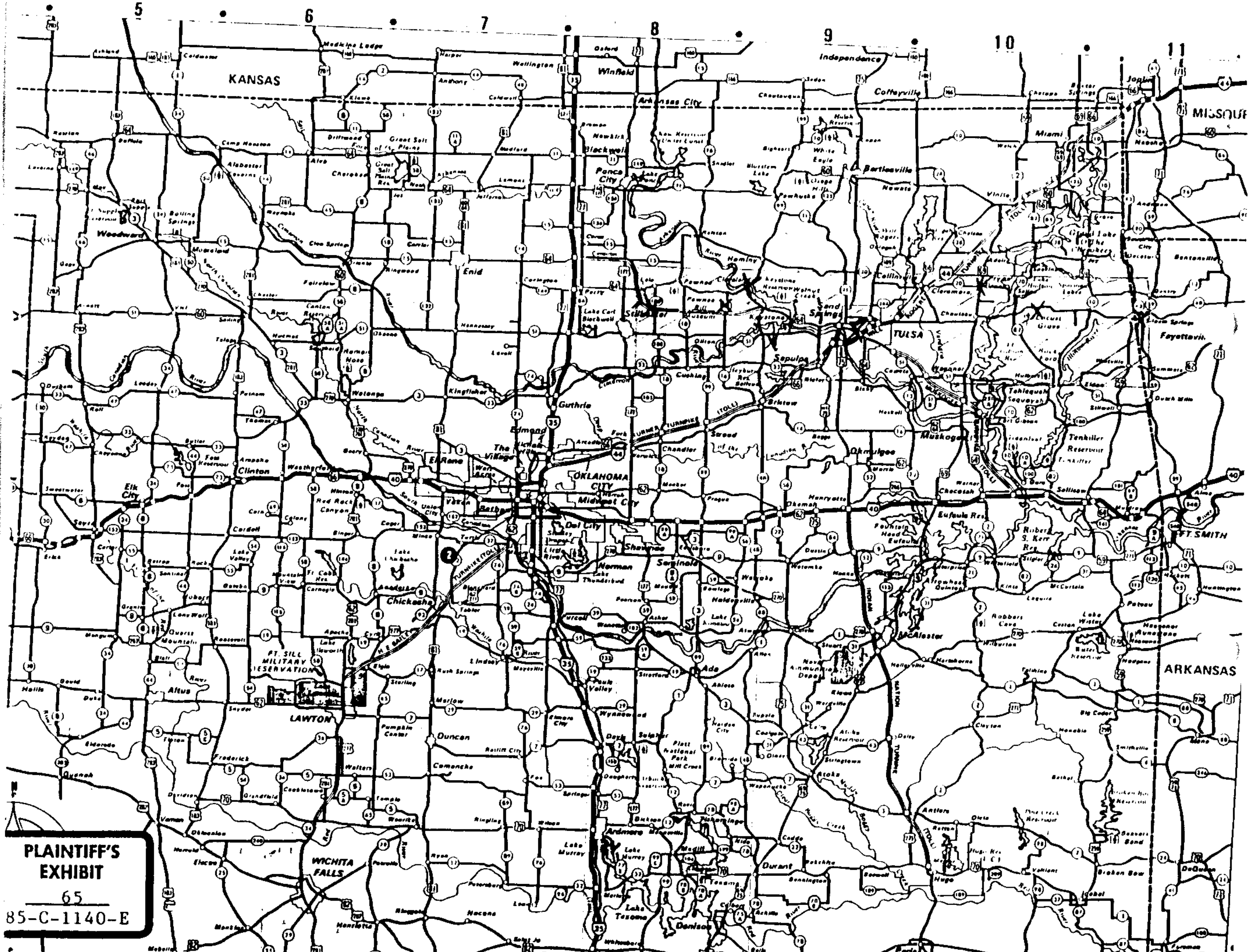
Osage's and Davko's use of GAS-N-GO or a confusingly similar mark outside of a rectangular region defined by boundaries 80 miles to the east and west of Tulsa, Oklahoma and 10 miles to the north and south of Tulsa, as shown on attached Exhibit A, in connection with services rendered at a gasoline service station or the sale of petroleum products infringes Standard Oil's marks GAS AND GO and GAS & GO under 15 U.S.C. § 1114(a). Therefore, Osage and Davko, Inc., and their officers, directors and successors in interest are enjoined from using outside of this rectangular region GAS-N-GO or any confusingly similar mark in connection with services rendered at a service station or the sale of petroleum products.

Standard Oil's use of GAS AND GO and GAS & GO does not infringe on any of the rights of Davko or Osage.

The Court awards Standard Oil its costs. Standard Oil is to file with the Clerk a verified bill of costs within ten days after entry of this Judgment.

It is so ordered on this the 31st day of Oct., 1988.

U.S. District Court Judge
Northern District of Oklahoma



PLAINTIFF'S EXHIBIT

65

85-C-1140-E

jkc

OBA No.: 8382

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SUN VALLEY AVIATION, INC., an Idaho corporation,

Plaintiff,

vs

MID-STATES AIRCRAFT ENGINES, INC., an Oklahoma corporation,

Defendant.

Case No.: 87 C-1063B

STIPULATION OF DISMISSAL

COMES NOW the undersigned parties and hereby stipulate that the above style cause is hereby dismissed with prejudice as the case has been settled between the parties.

Respectfully submitted,

KNOWLES, KING & SMITH

BY _____
BRAD SMITH
Attorney for Plaintiff
Sun Valley Aviation, Inc.

BY _____
EDWARD A. MCCONWELL
Attorney for Defendant
Mid-States Aircraft Engines, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 27 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

RUTH MOORE, pro se,

Plaintiff,

vs.

OFFICERS GARDNER, et al.,

Defendants.

No. 81-C-477-E

JUDGMENT

This action came on for consideration before the Court, Honorable O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendants, that the action be dismissed on the merits, and that the Defendants recover of the Plaintiff their costs of action.

ORDERED this 26th day of October, 1988.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

157

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FOUR "D" ENERGY, INC.,	)	
	)	
Defendant.	)	Civil Action No. 87-C-969-E

J U D G M E N T

After reviewing the pleadings, briefs, and exhibits of the parties and based upon this Court's order filed October 13, 1988, the Court enters the following findings and judgment, as a matter of law, in favor of the Plaintiff, United States of America, as follows:

This Court has jurisdiction of this action under 30 U.S.C. § 1268(d), 28 U.S.C. § 1345, and 28 U.S.C. § 1355. Venue is proper under 28 U.S.C. § 1391(b), 1395(a).

The Defendant, Four "D" Energy, Inc., at all times relevant hereto, conducted a surface coal mining and reclamation operation in Rogers County, Oklahoma, which is within the jurisdiction of this Court.

The Court further finds that following the issuance of notice of violation (NOV) 81-4-9-4 against the Defendant, the Secretary sent to the Defendant a proposed assessment of civil penalty on February 23, 1981. The Court further finds that following the issuance of NOV 84-3-259-3 against the Defendant,

the Secretary sent the Defendant a proposed assessment of civil penalty on June 27, 1984 and a modified proposed assessment was sent to the Defendant on August 9, 1984. The Court further finds that following the issuance of cessation order (CO) 84-3-9-1 against the Defendant, the Secretary sent to the Defendant a proposed assessment of civil penalty on April 2, 1984 and a modified assessment on April 25, 1984.

The Court further finds that the Defendant has failed to pay the above-described proposed civil penalties and has failed to deposit into escrow the above-described proposed assessments. The Court finds that the Defendant, therefore, has waived all legal right to contest the existence of the notices of violation and cessation order and the amount of the penalties assessed thereon.

The Court further finds that with respect to NOV 81-4-9-4 the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior (OSM), acting on behalf of the Secretary, issued a final order requiring the payment of a penalty in the amount of $440.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be imposed and calculated based upon Plaintiff's Exhibit "2R" which was filed in this action in support of Plaintiff's motion for summary judgment.

The Court further finds that with respect to NOV 84-3-259-3 OSM issued a final order requiring the payment of a

penalty in the amount of $1,800.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be imposed and calculated based on Plaintiff's Exhibit "3S" filed herein.

The Court further finds that in regard to CO 84-3-9-1 OSM issued a final order requiring the payment of a penalty in the amount of $22,500.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be imposed and calculated based on Plaintiff's Exhibit "4L" filed herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, United States of America, be granted judgment, as a matter of law, against the Defendant in the following amounts:

VIOLATION	PRINCIPAL PENALTY	INTEREST AS OF 10/30/88	LATE PAYMENT PENALTY	ADMINISTRATIVE COSTS
NOV 81-4-9-4	$ 440.00	$ 142.89	$ 95.26	$ 585.00
NOV 84-3-259-3	$ 1,800.00	$ 522.90	$ 333.76	$ 540.00
CO 84-3-9-1	$22,500.00	$ 7,306.64	$ 4,871.10	$ 585.00
	$24,740.00	$ 7,972.43	$ 5,300.12	$1,710.00

This judgment will carry with it a post-judgment interest rate of 8.12%.

DATED this 26 day of Oct, 1988.

/s/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

C-22
5/84

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Plumbers and Pipefitters, et al

Plaintiff(s),

vs.

Tulsa Michanical Inc.

Defendant(s).

No. 88-C-656-E

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 45 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 27th day of October, 1988.

UNITED STATES DISTRICT JUDGE

3

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

GLENN ELVIN MICHAEL HAGER,

Plaintiff,

v.

TULSA COUNTY DISTRICT COURT, et al,

Defendant.

88-C-352-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed October 5, 1988 in which the Magistrate recommended that the Petition for Writ of Habeas Corpus be dismissed without prejudice to its refiling, upon a showing that Petitioner has exhausted all his state court remedies.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the Petition for Writ of Habeas Corpus be dismissed without prejudice to its refiling, upon a showing that Petitioner has exhausted all his state court remedies.

Dated this 26th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

PARADISE PETS, INC., an Oklahoma corporation,

Plaintiff,

vs.

GARY GUNDLACH and JUDY GUNDLACH, d/b/a "THE PET RANCH,"

Defendants.

Case No. 87-C-433-E

STIPULATION AND PROTECTIVE ORDER FOR CONFIDENTIALITY

NOW, on this 27th day of October, 1988, upon the following stipulations of the undersigned counsel and the parties to the captioned action, the Court finds:

1. That both the admitted facts and disputed facts, the information, oral, written, or otherwise, exchanged between the parties in the course of this litigation, all discussions had in negotiation and resolution of this matter, as well as the terms of such resolution, are deemed to be confidential information and shall not be disclosed by any party or their counsel except as may be required by law;

2. That the parties, as well as their counsel, agree and further are enjoined and restrained by the Court from any use or disclosure to any person of the confidential information;

3. That any use or disclosure of the confidential information contrary to the terms of this Stipulation and Protective Order shall be subject to the contempt power of the Court, and that the nonviolating party may recover from the violating

14

party any and all damages caused by a violation hereof or the enforcement hereof, including costs and a reasonable attorney's fee; and

4. That the parties have agreed to a confidential resolution of the captioned action subject only to the entry of an order reflecting the foregoing.

IT IS THEREFORE ORDERED that the parties will be bound by this Stipulation and Protective Order without further notice hereof.

United States District Judge

APPROVED:

Michael J. Carson
2121 S. Columbia, Suite 600
Tulsa, Oklahoma 74114

Attorney for Plaintiff,
Paradise Pets, Inc.

STEPHEN E. SCHNEIDER
MARK B. JENNINGS

By
Shipley & Schneider
3401 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Defendants,
Gary Gundlach and Judy Gundlach,
d/b/a "The Pet Ranch"

OBA# 10620

FILED

OCT 27 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALBERT BIGPOND, et al. Plaintiffs, vs. FIBREBOARD CORPORATION, et al. Defendants.	)	Case No. 87-C-123E

ENTRY OF JUDGMENT

1. On October 6, 1988, the parties and their attorneys of record, appeared before this Court and announced ready for trial.

2. A jury of 6 persons were selected with one alternate.

3. The Plaintiff presented evidence on October 6, 7 and 11 and rested.

4. The Defendant moved for directed verdict and the motion was denied.

5. Defendant then presented evidence on October 12 and 13 and rested.

6. On October 14, the Defendant moved for directed verdict and the motion was denied.

7. On October 14, the jury heard closing arguments and was instructed. The alternate juror was discharged and the jury

began deliberation.

8. On October 14, the jury, after due deliberation, announced its verdict as follows:

> "We, the jury in the above cause, find as follows:
>
> II. In favor of Defendant, Garlock Inc, and against the Plaintiffs, Albert and Dorothy Bigpond."

The jury confirmed the unanimity of their verdict in open court and were discharged.

9. The Defendant was ordered by the Court pursuant to Local Rule 23 to prepare the Entry of Judgment.

10. Wherefore, this Court hereby orders the Court Clerk to enter judgment for the Defendant, Garlock Inc, and against the Plaintiffs, Albert and Dorothy Bigpond.

IT IS SO ORDERED.

/s/ JAMES O. ELLISON

James O. Ellison
United States District Judge

APPROVED:

Mark Iola
Maynard Ungerman
Attorney for Plaintiffs

Stephen S. Boaz, OBA #10620
David Glaspy
Attorney for Defendant,
Garlock Inc

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 27 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEBORAH C. ROSS, et al.,

Plaintiffs,

vs.

THE BELIEVER'S MINISTRY, INC., et al.,

Defendants.

No. 88-C-551-E

O R D E R

Now before the Court for its consideration are the motion to remand this action, filed by the Plaintiffs, and the motions to dismiss for failure to state a claim upon which relief can be granted, filed by the Defendants, Financial Programs, Inc. (Financial), Mutual Shares Corporation (Mutual), and Shawmut Bank, N.A. (Shawmut). The Court has reviewed the parties' briefs and exhibits, as well as the applicable statutory and case law, and is ready to rule upon the motions before the Court.

A brief review of the facts in this action is necessary before proceeding to the motions. In May 1987 Plaintiff Deborah C. Ross (Ross) held discussions with Defendants Dean and Sandra Brown, officers of The Believer's Ministry, Inc. (Ministry), to establish a trust fund for the benefit of the Ministry. According to Ross, she and the Browns agreed that Ross would contribute the corpus of the trust with mutual funds belonging to Ross; the trust income, derived from the mutual funds, would be used to support the works and programs of the Ministry. Ross alleges that it was her

intention, as the settlor and trustee, that only the income generated by the trust would be paid to the Ministry, as the beneficiary, and that the trust corpus would remain intact and not subject to invasion by the Ministry. On or about May 20, 1987, the Ministry's board of directors, including Ross, established the trust fund described above and named it the "Carmel Endowment".

On May 24, 1987, Ross conveyed her interest in certain mutual funds accounts to the "Carmel Endowment" by mailing written instructions for the transfer of those interests to Defendant Shawmut, as the authorized transfer agent for Defendant Mutual, and to Defendant Financial, as the authorized transfer agent for Financial Industrial Income Funds.[1] Using virtually the same form of letter, Ross directed the two Defendant transfer agents to transfer her interests in particular, numbered accounts to the following:

> The Believer's Ministry, Inc.
> Carmel Endowment
> First Interstate Bank of Nevada
> Sunset Eastern Office #173
> P. O. Box 15188
> Las Vegas, NV 89114
> Account Number:

Ross also directed that "all future cash dividends earned on those particular accounts" should be remitted monthly to the following:

> The Believer's Ministry, Inc.
> First Interstate Bank of Nevada
> Sunset Eastern Office #173
> P. O. Box 15188
> Las Vegas, NV 89114
> Account Number: 0048439

---

[1]Financial Industrial Income Funds is not a Defendant in this action.

Ross signed all of these transfer notices in the following manner:

[signature]
Deborah C. Ross
Trustee
Carmel Endowment

On July 16, 1987, Ross had trust indenture documents drawn up and executed for the "Carmel Endowment" or the "Carmel Trust", as it was named in the indenture documents. Ross and Plaintiff Bank of Oklahoma were named as Co-trustees.

Plaintiffs' causes of action against Defendant Shawmut, Mutual and Financial are based upon the contention that those Defendants negligently transferred Ross' interests in the mutual funds to the Ministry, rather than the Carmel Endowment. Plaintiffs allege that Defendants Dean and Sandra Brown were thus able to invade the trust corpus and redeem the investments in Defendants Mutual and Financial Industrial Income Funds. Plaintiffs contend that, after redeeming the investments in the name of the Ministry, the Browns then pocketed the proceeds of the investments. Plaintiffs allege that Defendants Shawmut, Mutual and Financial failed to take notice of the defective transfer notice received from Ross, in that the transfer did not direct transfer of legal title to a trustee, and that the notice was signed by Ross in a trustee capacity, instead of in her owner capacity. Plaintiffs further allege that Shawmut, Mutual and Financial breached their fiducial duties owed to Ross as a shareholder by failing to exercise care and diligence in ensuring that the transfer was unambiguous and in proper form, in redeeming

the investments without notice to and/or authorization from Ross, and in failing to inquire as to the person authorized to deal on behalf of the intended transferee, the Carmel Endowment.

The Court will consider the Plaintiffs' motion to remand, before turning to the Defendants' motions to dismiss.

Plaintiffs' Motion to Remand

Plaintiffs originally filed this action in the District Court of Tulsa County, State of Oklahoma. After being served with Plaintiffs' Amended Complaint, Defendants Shawmut, Mutual and Financial removed the action to this Court pursuant to 28 U.S.C. §1441(c), which provides that:

> Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

Defendant Shawmut is a national banking association with its principal place of business in Massachusetts. Defendant Mutual was incorporated and had its principal place of business in New York. Defendant Financial was incorporated in Delaware; it alleges that Oklahoma is not its principal place of business, nor is it registered to do business in Oklahoma. These Defendants thus allege that they are diverse in citizenship from the Plaintiffs, who are citizens of Oklahoma, and premise jurisdiction pursuant to

29 U.S.C. §1332, over the allegedly separate and independent claims asserted against them.

The critical issue presented here is whether Plaintiffs' claims against Defendants Shawmut, Mutual and Financial [the "transfer" Defendants], as set forth in the fifth and sixth causes of action in Plaintiffs' Amended Complaint, are "separate and independent" of the claims Plaintiffs made against the other Defendants, the Browns and the Ministry [the "Ministry" Defendants]. Plaintiffs contend that the series of transactions with the transfer Defendants and the Ministry Defendants are "interlocked", in that "but for" the alleged negligence of the transfer Defendants in transferring Ross' interests in the mutual funds, the Ministry Defendants could not have wrongfully redeemed the mutual funds and allegedly pocketed the proceeds. Plaintiffs argue that they have suffered a single injury, the loss of funds to which they had legal title as trustees, and maintain that it was the combination of the negligent actions of the transfer Defendants and the wrongful actions of the Ministry Defendants that caused that single injury. See Plaintiff's Brief in Support of Motion to Remand, p. 4.

Defendants Shawmut and Financial respond with the argument that Plaintiffs have suffered two wrongs: an allegedly negligent transfer of Ross' mutual funds by the transfer Defendants, and the allegedly tortious conversion of the proceeds of those mutual funds by the Ministry Defendants. Defendants contend that each wrong suffered is restricted solely to one set of Defendants; the

Ministry Defendants had no part in, and bear no responsibility for any negligent transfer and the transfer Defendants likewise had no part in, and bear no responsibility for the misappropriation of Ross' funds. Defendants further point out the different nature of the Plaintiffs' claims against each set of Defendants, noting that Plaintiffs' claims rest on a breach of contract cause of action against the transfer Defendants, while an intentional tort of conversion cause of action is lodged against the Ministry Defendants.

The leading case construing §1441(c)'s "separate and independent" requirement is the Supreme Court's decision in American Fire & Casualty Co. v. Finn, 341 U.S. 6 (1951). There, the Supreme Court emphasized that:

> Where there is a single wrong to Plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under §1441(c).

Id. at 14. Additional guidance on this issue is furnished in several Tenth Circuit decisions. In Snow v. Powell, 189 F.2d 172 (10th Cir. 1951) the two key words were defined.

> The word "separate" means distinct; apart from; not united or associated. The word "independent" means not resting on something else for support; self-sustaining; not contingent or conditioned.

Id. at 174. In Gray v. New Mexico Military Institute, 249 F.2d 28 (10th Cir. 1959), the Tenth Circuit held that a claim alleged against one Defendant was not separate and independent, but rather was "contingent upon a determination of the occurrence of the tort"

cause of action alleged against the other Defendants there. Id. at 30.

Removability under §1441(c) must be determined on the basis of the pleadings at the time of removal. Id. In the present case, Plaintiffs' Amended Petition sets forth four claims against the Ministry Defendants, alleging causes of action based upon fraudulent conduct by those Defendants. Plaintiffs seek damages in the amount of $150,341.10 (the amount wrongfully redeemed from the mutual funds), punitive damages, and an accounting from the Ministry Defendants of the allegedly wrongfully redeemed mutual funds. Plaintiffs' fifth and sixth causes of action against the transfer Defendants allege a negligent breach of duty in the transfer of those same mutual funds; Plaintiffs seek damages in the amount of $150,341.10 from the transfer Defendants.

It is apparent from Plaintiffs' Amended Petition that they seek a return of the amount of the lost trust corpus, by alternative remedies and against alternative sets of Defendants. Each set of Defendants may have committed a separable wrong, distinguishable from that committed by the other set. However, it is both wrongs which caused the single injury to the Plaintiffs in the loss of the trust corpus. Without the wrong of the other Defendants each set of Defendants could not in themselves have caused Plaintiffs' loss. Plaintiffs' claims against both the transfer and the Ministry Defendants derive from the same chain of events, alleged by Plaintiffs to have culminated n the loss of the trust corpus of the Carmel Endowment. Although the Defendants'

respective alleged actions are distinctive in time and in the nature of the wrongs alleged, the Court finds that those actions are sufficiently related and associated in their respective contribution toward causing Plaintiffs' alleged injuries that the claims against the transfer Defendants cannot be deemed "separate and independent" pursuant to 28 U.S.C. §1441(c).

The Court thus finds that the fifth and sixth causes of action alleged against the transfer Defendants, Shawmut, Mutual and Financial, are not "separate and independent" claims, under §1441(c) and that the removal of this action to this Court from the District Court of Tulsa County, State of Oklahoma was improvident. The Court therefore grants the Plaintiffs' motion to remand this action to the District Court of Tulsa County.

Having determined that this action should be remanded to the state court, this Court is without jurisdiction to consider Defendant Shawmut's, Mutual's and Financial's motions to dismiss for failure to state a claim.

ORDERED this 27th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED
OCT 27 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
GREATER ATLANTIC AND PACIFIC INVESTMENT GROUP, INC.,	)	Case No. 87-00200-W Chapter 11
	)	
Debtor,	)	
	)	
VICTOR SAVINGS AND LOAN ASSOCIATION,	)	Adversary No. 88-0158-W
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	
WILLIAM R. GRIMM, TRUSTEE,	)	
	)	
Defendant/Appellee.	)	District Ct. No. 88-C-880-B

DISMISSAL OF APPEAL

Appellant, the Federal Savings and Loan Insurance Corporation hereby dismisses its Appeal in the above-styled cause with prejudice.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON

By _____

William D. Nay, OBA #6588
R. Mark Petrich, OBA #11956
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

SNEED, LANG, ADAMS, HAMILTON
& BARNETT

By: Brian S. Gaskill by RMP
Brian S. Gaskill
Sixth Floor
114 E. 8th Street
Tulsa, Oklahoma 74119

ATTORNEYS FOR FEDERAL SAVINGS
AND LOAN INSURANCE CORPORATION
IN ITS CAPACITY AS RECEIVER FOR
VICTOR SAVINGS AND LOAN
ASSOCIATION

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the 27th day of October, 1988, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following counsel of record:

William R. Grimm
610 S. Main, Suite 300
Tulsa, OK 74119

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WHAM, an Oklahoma general partnership,	)	
Plaintiff,	)	
vs.	)	Case No. 86-C-818-B
FINA OIL AND CHEMICAL COMPANY, a Delaware corporation,	)	
Defendant,	)	
vs.	)	
OAKLAND PETROLEUM OPERATING COMPANY, INC.,	)	
Additional Party to Counterclaim.	)	

FILED
OCT 27 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER STAYING EFFECTIVENESS OF JUDGMENT

The Court has before it for consideration the joint motion of all parties to stay the effectiveness of the Judgment of July 5, 1988 pending its appellate review.

Finding that good cause exists for the granting of that motion, it is hereby Ordered that the dates set forth in the Judgment, as listed below in the left-hand column, shall be stayed until the number of days in the right-hand column after the date a final Judgment is entered in the case following all appellate review, or following the expiration of the time for appeal if no appeal is taken:

September 1, 1988	90 days
September 30, 1988	119 days
October 1, 1988	120 days

70

November 1, 1988 150 days

December 1, 1988 180 days

It is so Ordered this 27 day of October, 1988.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM
AND CONTENT:

JON R. RUNNING & ASSOCIATES

Jon R. Running, Attorneys
for Plaintiff and Additional
Party to Counterclaim

HALL, ESTILL, HARDWICK,
GABLE, GOLDEN & NELSON

Richard A. Paschal,
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANDREW LEE WILSON and SALLY POE WILSON, individually and as husband and wife,	)	
Plaintiffs,	)	
vs.	)	No. 88-C-446-B
HOWARD HENDERSON, individually, and as owner of and d/b/a "SITE GUARD",	)	
Defendant.	)	

OCT 27 1988

Jack C. Silver
U. S. DISTRICT

ORDER OF
DISMISSAL WITH PREJUDICE

WHEREAS, the Plaintiffs, Andrew Lee Wilson and Sally Pope Wilson, and the Defendant, Howard Henderson d/b/a "Site Guard", have stipulated that all issues existing between them have been fully settled and have requested the Court to enter an order of dismissal with prejudice as to the Defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the cause should be and the same is hereby dismissed with prejudice as to the Defendant.

Dated this 27 day of October, 1988.

S/ THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THURSTON FIRE & CASUALTY INSURANCE COMPANY, Plaintiff, vs. CRAWFORD & COMPANY, and CORPORATE UNDERWRITERS AGENCY, INC., Defendants.	)	No. 87-C-849-B

OCT 27 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Plaintiff Thurston Fire & Casualty Insurance Company's ("Thurston") Motion for Summary Judgment against Crawford & Company ("Crawford") and Defendant Corporate Underwriters Agency, Inc. ("CUA"). A suggestion of bankruptcy has been filed that CUA filed a voluntary petition in bankruptcy in the Southern District of Texas.

This Court has jurisdiction over this matter based on diversity of citizenship and the amount in controversy exceeds $10,000.00. The parties agree Texas law applies. 15 Okl.St.Ann. §162.

Plaintiff's Complaint is for declaratory relief that it is not liable to Defendants relative to an alleged agreement entered into on March 3, 1983. Crawford filed a Counterclaim alleging Plaintiff has breached an oral agreement of March 3, 1983 between the parties. In the alternative, Crawford claims it is entitled to compensation under a theory of *quantum meruit*.

Defendant CUA was not licensed to write insurance in Texas and a meeting was conducted March 3, 1983 to arrange "fronting" by Plaintiff. Terry Burkhart, Senior Vice-President of Thurston, and Alexander J. Stone, President of Thurston, met with a Crawford representative, John Michael Barron. (Barron Depo. pp. 30-33; 27-28). At the meeting it was discussed that, for a period of one year, Plaintiff was to be the insurer and CUA would secure reinsurance to cover the policies written. (Burkhart Depo., pp. 15-16). Crawford was to adjust the claims made. (Burkhart Depo., p. 29).

The parties agree that at this meeting, Barron, the Crawford representative, had no authority to bind Crawford to an agreement. (Barron Depo. p. 52). Terry Burkhart knew at the time of the March 3, 1983 meeting that Barron of Crawford was not authorized to bind Crawford in the deal being discussed. (Burkhart Affidavit, ¶9). There was never an executed written contract between Plaintiff and Crawford. (Barron Depo. p. 81).

After this meeting Crawford sent a bill to CUA for $26,000 to fund a trust account so that claims could be paid. CUA sent Crawford a check for that amount. Also, the Vice-President of Crawford sent a letter agreement to Plaintiff requesting a signature and an irrevocable letter of credit to be returned. (Plaintiff's Exhibit 2).

Plaintiff never executed the documents. (Barron depo. p. 81). From a letter dated October 17, 1983, Crawford may have been on notice that Plaintiff was not going forward with the proposal.

(Plaintiff's Exhibit 3). Crawford, however, continued to adjust claims written by CUA two and one-half years after the March 3, 1983 meeting. (Barron Depo. p. 88).

To survive a motion for summary judgment, Crawford "must establish that there is a genuine issue of material facts. Crawford "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushuta v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

Crawford has failed to establish the existence of a material factual dispute concerning whether an oral contract was entered. Barron had no authority to contract for Crawford; Burkhart understood that, and therefore there was no meeting of the minds. Summary judgment is sustained in favor of Plaintiff on its claim and on Crawford's first claim. The Court therefore does not reach the issue of whether the alleged agreement falls within the statute of frauds.

Crawford's second claim is for *quantum meruit*. Crawford alleges it furnished claims adjusting services for Plaintiff and Plaintiff accepted and received the benefit of the services. It is unclear

to the Court what knowledge Plaintiff had about the claims adjusting activity of Crawford. Issues of fact remain on this issue and on the reasonableness of the damages claimed.

Summary judgment is hereby sustained in favor of Plaintiff on its claim that no formal contract was entered into by the parties, and on Defendant Crawford's first claim for relief. Crawford's *quantum meruit* theory will continue on the following trial schedule:

November 9, 1988 10:00 A.M.	Final pretrial
November 14, 1988	Amend pretrial order and exchange prenumbered exhibits
November 17, 1988	File requested instructions, requested voir dire, trial briefs and any motions in limine
November 21, 1988 9:30 A.M.	Jury trial

DATED this 27th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JAMES COLLINS,

Plaintiff,

v. 88-C-408-E

OTIS R. BOWEN, M.D., Secretary of Health and Human Services,

Defendant.

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed October 5, 1988 in which the Magistrate recommended that the case be remanded to the Secretary for further action.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the case is remanded to the Secretary for further action.

Dated this 26th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

9

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

SUNBELT BANCORPORATION, INC., Plaintiff, vs. THE AETNA CASUALTY & SURETY COMPANY, Defendant. REPUBLIC FINANCIAL CORP., REPUBLIC TRUST & SAVINGS COMPANY; and CENTRAL BANK AND TRUST, Third Party Defendants.	)	No. 85-C-837-Conway Consolidated with No. 85-C-937-Conway and No. 85-C-938-Conway

FILED

OCT 26 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Motion and Stipulation for Dismissal with Prejudice, jointly executed by all the parties, the Court dismisses with prejudice all the complaints and actions of each of the parties against each other, with each to suffer its own costs, expenses and attorney fees.

Dated: October 24th, 1988.

Hon. John E. Conway,
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
) CIVIL NUMBER 88-C-612 B
GERALD L. COLLEY, JR.,)
456083493)
)
Defendant,)

FILED

OCT 26 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

Herbert N. Standeven
District Counsel
Veterans Administration
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: _____
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the 24th day of October, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: GERALD L. COLLEY, JR., at 5611 South 66th West Avenue,
Tulsa, OK 74107.

_____
LISA A. SETTLE, VA Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TRANSMISSION STRUCTURES LIMITED, Plaintiff, v. TOM (ASHLEY THOMAS) JOYNER, an individual; JOYNER BROADCASTING CORPORATION, a North Carolina corporation; POWER BROADCASTING, INC., a North Carolina corporation; JOYNER MANAGEMENT COMPANY, a North Carolina corporation; JOYNER COMMUNICATIONS, INC., a North Carolina corporation; and ATLANTIC BROADCASTING CORPORATION, an Illinois corporation, Defendants.	)	No. 87-C-543-B

OCT 2 1988
Jack C. Silver
U. S. DISTRICT COURT

O R D E R

In accordance with the Stipulation of the parties filed August 22, 1988, the Court hereby dismisses Defendants Tom (Ashley Thomas) Joyner, Joyner Broadcasting Corporation, and Power Broadcasting, Inc.

DATED this 26th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NINA McCLENDON,

Plaintiff,

v.

OTIS R. BOWEN, M.D., Secretary of Health and Human Services,

Defendant.

88-C-264-E

FILED

OCT 26 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed October 5, 1988 in which the Magistrate recommended that the case be remanded to the Secretary for further action.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the case is remanded to the Secretary for further action.

Dated this 26th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 25 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ROBERT C. BROWN,

Plaintiff,

vs.

AMOCO CORPORATION and NORMAN COTTER individually and as supervisor of Data Management Group of the Information Services Department,

Defendants.

Case No. 88-C-560-E

ORDER ALLOWING DISMISSAL ON PLAINTIFF'S MOTION

IT IS HEREBY ORDERED that Plaintiff hereby applies to the Court upon Plaintiff's Motion for Leave to Discontinue this action and that it be ordered that the Complaint be dismissed without prejudice, with each party to bear his own costs.

DATED: October 25, 1988.

/s/ [illegible]
DISTRICT JUDGE

GEORGINA B. LANDMAN, ESQ.
PAPPAS, LANDMAN & ASSOCIATES, P.A.
1921 South Boston
Tulsa, Oklahoma 74119
(918) 585-2451

FILED
OCT 25 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. OKLAHOMA TURNPIKE AUTHORITY, Plaintiff,	)	
v.	)	No. 88-C-121-E
MOBILE AIR TRANSPORT CORP., and INDUSTRIAL INDEMNITY INSURANCE COMPANY, Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 25 day of Oct, 1988, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELLISON

United States District Judge

FILED
OCT 25 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM R. GRIMM, Successor Trustee for CHASE EXPLORATION CORPORATION,

Plaintiff,

v.

JAMES R. ADELMAN, et al

Defendants.

88-C-1289-E

ORDER

Now before the Court are Appellant/Petitioners Adelman's, Huddelston's, A&H Oil Company, Inc.'s, Adelman Enterprises, Inc.'s and Target Enterprises, Inc.'s, Notice of Appeal (docket #1) and Petition for a Prerogative Writ (Writ of Prohibition) (docket #2). Defendants complain of a discovery order entered by the Bankruptcy Court on September 16, 1988 in Adversary Case No. 88-0231-C.[1]

Title 28 U.S.C. §158(a) provides jurisdiction to hear appeals from final judgments, orders, and decrees without leave of Court. A final order is an order which ends litigation on the merits and leaves nothing for the court to do except execute judgment. In re Johns-Manville Corporation., 32 B.R. 728 (S.D.N.Y. 1983); (See also, In re Johns-Manville Corporation, 824 F.2d 176 (2nd Cir. 1987). An order concerning a discovery

[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion or order or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

matter is not a final order under §158(a); therefore, Defendants may not appeal as of right.

In addition, Defendants ask for an extraordinary writ to prohibit the Bankruptcy Court from enforcing its discovery order of September 16, 1988. Such writs issue only in aid of appellate jurisdiction. "The object of a writ of prohibition is to prevent a court of peculiar, limited, or inferior jurisdiction from assuming jurisdiction of a matter beyond its legal cognizance." Smith v. Whitney, 116 U.S. 167, 176 (1886).

A Bankruptcy Court's jurisdiction is based upon 28 U.S.C. §1334(b) and 28 U.S.C. §157, and includes "core proceedings", or matters that arise under Title 11 or arise in a case under Title 11. In re Hudson Oil Company, Inc., 68 B.R. 735, 738 (D. Kan. 1986); Matter of Wood, 825 F.2d 90 (5th Cir. 1987). Adversary proceedings, and discovery therein, arise in cases under Title 11. Bankruptcy Rules 7026-37 govern the conduct of discovery in adversary proceedings "in cases under Title 11" (Order of the United States Supreme Court, April 25, 1983).

Where, as here, the proceeding sought to be prohibited is within the Bankruptcy Court's jurisdiction, the power to issue the writ does not lie with this Court. "A writ of prohibition is never to be issued unless it clearly appears that the inferior court is about to exceed its jurisdiction." Smith v. Whitney, 116 U.S. at 176.

Appellants' assertion that the Bankruptcy Court may have erred misses the point. "A prohibition cannot be made to perform

the office of a proceeding for the correction of mere errors and irregularities." Ex parte Ferry Company, 104 U.S. 519, 520 (1886). "It cannot be made to serve the purpose of a writ of error or certiorari, to correct mistakes of that court in deciding any question of law or fact within its jurisdiction." Smith v. Whitney, 116 U.S. at 176.

In the case at bar, as well as in the case of Parr v. U.S., "the most that could be claimed is that the [Bankruptcy Court has] erred in ruling on matters within [its] jurisdiction. Extraordinary writs do not reach such cases; they may not be used to thwart the congressional policy against piecemeal appeals". (351 U.S. 513, 520-21 (1956)). See also, Smith v. Whitney, 116 U.S. at 178 ("The most that can be made of it is an error in the proceedings; but we cannot prohibit upon that account"). Thus, the Appellant/Petitioners are not entitled to a writ of prohibition as prayed.

Therefore, it is hereby ordered that the Notice of Appeal is dismissed and the Petition for Prerogative Writ is hereby denied.

Dated this 25th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BROWN J. AKIN, JR.,

Plaintiff,

vs.

SUNBELT BANCORPORATION, INC.; WESLEY R. McKINNEY; BRADLEY L. JOHNSON; DWIGHT PILGRIM; WILMA WOOD; and PEAT, MARWICK, MITCHELL & CO., INC.,

Defendants.

FILED
OCT 25 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 84-C-1005-Conway

ORDER

Upon application of plaintiff the Court hereby dismisses this action with prejudice as to all defendants.

DATED this 20th day of October, 1988.

The Honorable John E. Conway
United States District Judge

FILED

OCT 25 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENSINGTON COMPANY LIMITED PARTNERSHIP and JOHN H. WILLIAMS, Sr. Appellees, v. UNSECURED CREDITORS' COMMITTEE and ROBERT A. STOCKER, TRUSTEE, Appellants.	)	88-C-1198-E

ORDER

Now before the Court is Appellee's Motion to Dismiss the appeal of a Bankruptcy Court Order in Bankruptcy Case No. 86-00475W, **Adversary Proceeding No. 87-0337-W.**

Appellants seek to appeal an order pronounced from the bench on August 30, 1988 and reflected by a minute order of even date. Appellees move to dismiss the appeal because of its premature filing.

Bankruptcy Rule 8002(a) requires the notice of appeal be filed "within ten (10) days of the date of entry of the judgment, order, or decree appealed from.

In Rourke v. Maxwell, Case No. 85-C-963-E (January 9, 1987), this Court held that the date from which Bankruptcy Rule 8002(a) operates is the date when a written order memorializing the Court's decision is filed - not an oral pronouncement from the bench. An independent review of the file reveals the Bankruptcy court signed and filed an order memorializing its decision on September 27, 1988, two and one-half weeks after Appellant's Notice of Appeal. Appeal is properly taken from the subsequent

written order, not the oral pronouncement. Thus, this appeal is premature and Appellants' Motion to Dismiss granted. Therefore, the appeal in this case is, hereby, dismissed.[1]

Dated this 25th day of October, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

[1] Appellants also have pending in this Court an appeal from the final written order of September 27, 1988 in a separate case, Case No. 88-C-1364-E.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. COTNER, Plaintiff,	)	
vs.	)	No. 88-C-251-B
JUDGE KLEIN and JUDGE HOPPER and TULSA COUNTY, D.A., Defendants.	)	

FILED
OCT 25 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Now before the Court is the Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. §2254, of Robert E. Cotner.[1]

In his Petition, Cotner alleges as his sole ground:

> Lack of jurisdiction over Sovern (sic) Individual, Judge ADMISSION of breach of oath of office and refusal to follow federal law, or allow Defendant a defense or legal jury trial.

The thrust of the Petition is that Cotner was arrested for exceeding the speed limit, forced to make six (6) court appearances without being arraigned and now awaits a jury trial without an attorney of record in "Court (Judge Klein's) custody".

This Court does not have jurisdiction of the Petitioner's habeas corpus action under §2254 if the Petitioner is not in custody pursuant to a state court conviction. Cotner v. State of Oklahoma, 527 F.Supp. 470, 471 (W.D.Okla. 1981); Tinder v. Paula, 725 F.2d 801, 803 (1st Cir. 1984). Defendants' response shows one

[1]Petitioner has filed habeas petitions or civil rights action on at least thirty-six (36) different occasions in this Court.

week after Plaintiff filed this Petition for Writ of Habeas Corpus the case was dismissed because payment of the fine was made. Plaintiff is not being held for the reasons outlined in the petition.

Therefore, the Petition for Writ of Habeas Corpus is hereby dismissed.

IT IS SO ORDERED this 25th day of Oct., 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRUCE K. RUCKER, an individual, d/b/a Lightning Electric Supply,	)	
Plaintiff,	)	
vs.	)	Case No. 88-C-72-B
BUNN-O-MATIC CORPORATION, a Delaware corporation, and NOLAN R. RIFFEL, d/b/a PRESTIGE COFFEE SYSTEMS, a sole proprietorship,	)	
Defendants.	)	

FILED
OCT 25 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, on this 24th day of October, 1988, this matter comes on before the Court pursuant to the Stipulation as to Dismissal Without Prejudice submitted by counsel for all of the parties in this action and requesting dismissal of the Defendant, NOLAN R. RIFFEL, d/b/a PRESTIGE COFFEE SYSTEMS, without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, NOLAN R. RIFFEL, d/b/a PRESTIGE COFFEE SYSTEMS, be and he is hereby dismissed as a Defendant in this action, without prejudice to all claims and causes of action which either the Plaintiff or the Defendant, BUNN-O-MATIC CORPORATION, might or could have as against said Defendant.

United States District Judge

14

FILED
OCT 25 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CORE-MARK DISTRIBUTORS MID-CONTINENT, INC., d/b/a BOTTS WHOLESALE,

Plaintiff,

vs.

TRAVIS HOCKERSMITH,

Defendant.

No. 88-C-970-B

J U D G M E N T

This matter comes on for consideration before the undersigned Judge of the District Court upon the application of Plaintiff for entry of a default judgment against Defendant Travis Hockersmith. It appearing that Defendant Travis Hockersmith has been duly served with Summons and Complaint, that he has failed to answer, plead or otherwise appear in this matter and the time for answer, pleading or appearance having passed, Plainiff is entitled to judgment by default against him.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendant Travis Hockersmith in the amount of Ten Thousand Two Hundred Thirty Two and 92/100 Dollars ($10,232.92), together with interest at the contract rate of 1.5% per month. Costs and attorney fees will be considered upon proper application under Local Rule 6.

IT IS SO ORDERED this 24th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

5

FILED
OCT 25 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES ~~BANKRUPTCY~~ District COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

In re:	
INDEPENDENT MOTEL MANAGEMENT, CORP.,	
DEBTOR	Case No. 86-03108-W CHAPTER 7 District Ct. No. 88-C-899-E

ORDER DISMISSING APPEAL

The Debtor having filed his **MOTION BY DEBTOR TO DISMISS APPEAL FILED BY DEBTOR AS MOOT** on October 13, 1988.

For Good Cause shown the Appeal filed by the debtor herein on August 12, 1988 appealing a final ORDER of the bankruptcy Court entered July 14, 1988 shall be dismissed as moot.

The Debtor shall mail a copy of this Order to William R. Grimm, Trustee.

IT IS SO ORDERED.

Dated: October 25, 1988

United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 25 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
POTTER'S FLYING SERVICE, INC.,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 88-C-882-E

DEFAULT JUDGMENT

This matter comes on for consideration this 25 day of October, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Potter's Flying Service, Inc., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Potter's Flying Service, Inc., acknowledged receipt of Summons and Complaint on August 15, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Potter's Flying Service, Inc., for the principal sum of $1,000.00, until judgment, plus interest thereafter at the current legal rate of 8 1/2 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

NNB/mp

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CAROLYN F. DICKERSON,
24505767

Defendant,

CIVIL NO. 88-C-730 E

CONSENT JUDGMENT

This matter coming on before this Court this 25 day of Oct, 1988, and the Court being informed in the premises and it appearing that the parties have agreed and consent to a judgment as set forth herein; in accordance therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, United States of America, have and recover judgment against the Defendant, CAROLYN F. DICKERSON, in the principal sum of $674.14, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of $9.00. Future costs and interest at the legal rate of 8.12%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 25 day of Oct, 1988.

By: /s/ JAMES O. ELLISON
U.S. DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

HERBERT N. STANDEVEN

District Counsel
Veterans Administration
Counsel for Plaintiff

AGREED By: Lisa A. Settle
LISA A. SETTLE, Attorney

AGREED: Carolyn F. Dickerson
CAROLYN F. DICKERSON

CERTIFICATE OF MAILING

This is to certify that on the 19th day of October, 1988, a true and correct copy of the foregoing was mailed postage prepaid thereon to: CAROLYN F. DICKERSON, 1312 North Hickory Street, Broken Arrow, OK 74012.

Lisa A. Settle
LISA A. SETTLE, VA Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SINCLAIR OIL CORPORATION, a Wyoming corporation,	)	
Plaintiff,	)	
vs.	)	No. 87-C-738-B
ENGINEERING ENTERPRISES, INC. OF NORMAN, an Oklahoma corporation, and R-I LIMITED, an Oklahoma limited partnership,	)	
Defendants.	)	

OCT 25 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Plaintiff's Motion for Summary Judgment, filed pursuant to Fed.R.Civ.P. 56. The jurisdiction of the court is based on diversity of citizenship and the controversy exceeds $10,000. For the reasons set forth below, Plaintiff's Motion for Summary Judgment is granted.

On August 26, 1982 Texaco, Inc. and Defendant Engineering Enterprises, Inc. ("EEI") as general partner for R-I Limited ("R-I") entered into a miscellaneous work agreement ("the Texaco Agreement") for the recovery of hydrocarbons from under Texaco's refinery. The Texaco Agreement was assigned to Plaintiff Sinclair Oil Corporation ("Sinclair") when Sinclair purchased the Texaco Refinery in July 1983. Following the assignment of the Texaco Agreement to Sinclair there were numerous attempts to renegotiate the Texaco Agreement. The Texaco Agreement had a termination date of August 26, 1987.

Plaintiff filed this action seeking declaratory judgment that the contractual relationship between the parties terminated on August 26, 1987 and that the parties did not enter into a new contractual relationship. Plaintiff contends that Defendants are liable for an accounting for all oil recovered from the refinery site subsequent to the expiration of the agreement and for reimbursement of electric power provided for Defendants' oil recovery operation as provided for in the contract. Plaintiff further seeks relief enjoining Defendants from trespass and occupation of the refinery only so long as necessary to remove all property belonging to them, excluding fixtures.

Several documents were exchanged between the parties concerning the negotiation of a new contract. Plaintiff characterizes these as merely draft proposals requiring final approval from Sinclair's management in Salt Lake City to become enforceable. Defendant contends a contract was entered into, citing a letter dated February 1, 1987 from Sinclair to EEI and a letter from EEI to Sinclair on February 12, 1987. Sinclair's letter to EEI forwarded a contract and stated:

> "Please sign these contracts and return to Mr. H. M. Connell, Refinery Manager, Sinclair Oil Corporation, P. O.Box 970, Tulsa, Oklahoma 74101. Sinclair will then sign the contracts and return one copy to your office."

EEI received the contracts and signed them and returned them on February 12, 1987. This letter stated:

> "Upon receipt of a fully executed copy of the contract, we will initiate further oil recovery activities."

The parties agree the contract was never signed by Sinclair. (Friberger Depo. p. 272). Further, the parties agree the alleged agreement was for a term in excess of one year. Even after the February letter exchange both parties continued to perform under the Texaco Agreement. (Fryberger Depo. pp. 271-272). Performance under the Texaco Agreement was inconsistent with the performance contemplated by the February proposals. (Fryberger Depo. pp. 271-272).

To survive a motion for summary judgment Defendants must establish that there is a genuine issue of material facts. Defendants "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushuta v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

15 Okl.St.Ann. §136 specifically and clearly states:

> "The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:
>
> 1. An agreement that, by its terms, is not to be performed within a year from the making thereof ...."

Sinclair, the party to be charged, never subscribed the contract. The memorandum accompanying it specifically pointed out it was unsigned by Sinclair. Under Oklahoma law it is therefore unenforceable.

Plaintiff also moves for summary judgment on Defendants' counterclaims. EEI alleges Sinclair maliciously interfered with its contract with R-I. EEI, as consultant to R-I, claims it expended funds for goods and services and "because of Sinclair's refusal to allow R-I to continue to perform the Contract [February proposal] on its part, Sinclair has prevented R-I from continuing the consulting contract...." However, this Court has found there was no new agreement. Further, since EEI is the general partner of R-I, it is bound by the acts of R-I. Therefore, summary judgment is granted in favor of Sinclair Oil Corporation on EEI's counterclaim.

R-I, in its counterclaim, alleges Plaintiff breached the original agreement and also breached the alleged contract of February 1, 1987. Since the Court has held no new contract was entered, summary judgment is sustained on any claim after August 26, 1987 when the original contract terminated. However, the motion is overruled on R-I's claims of breach prior to that date as there appears to be a genuine dispute over an issue of fact.

R-I's second claim for relief alleges Sinclair deceived and deliberately misrepresented to R-I that a contract was formed and R-I has been damaged by the malicious and fraudulent act. Plaintiff's motion for summary judgment on this claim is hereby

sustained. The Court's finding that no new agreement was formed and that the parties continued to perform under the original Texaco agreement precludes this claim.

Summary judgment is therefore awarded to Plaintiff Sinclair Oil Corporation on all of its claims against Defendants and to Plaintiff on Defendant EEI's counterclaims. Summary judgment is awarded in part on Defendant R-I's counterclaim and overruled in part.

IT IS THEREFORE ORDERED that the contractual relationship between the parties terminated August 26, 1987, and the parties did not enter into a new contractual relationship; Defendants are ordered to account for all oil recovered from the site subsequent to August 26, 1987; Defendants are enjoined from trespass and may occupy the premises of the refinery only so long as to remove the property belonging to them. Plaintiff is hereby awarded $1,587.56 for electric power use.

R-I's claim will continue on the following schedule:

December 5, 1988	The parties are to file an agreed pretrial order and exchange all prenumbered exhibits
December 12, 1988	The parties are to file any proposed voir dire, jury instructions, and trial briefs.
December 19, 1988 9:30 A.M.	Jury trial

DATED this 24th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

COINTEL COMMUNICATIONS, INC.,)
)
Plaintiff,)
)
v.)
)
SEISCOR TECHNOLOGIES, INC., et al,)
)
Defendants.)

86-C-748-C

FILED
OCT 24 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed September 30, 1988, in which the Magistrate made recommendations on pending motions. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that plaintiff's Motion to Dismiss with Prejudice is granted, and defendants' Motion for Leave to Amend Answer to Assert Counterclaim and Motion to Lift Stay of Proceedings to Amend Answer to Assert Counterclaim or to Conduct Discovery is denied.

Dated this 24 day of October, 1988.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

HAGAN PLUMBING COMPANY, INC.,

Plaintiff,

vs.

VANGUARD PLASTICS, INC.; ADMIRAL MARINE; SHELL CHEMICAL COMPANY; and CELANESE CORPORATION,

Defendants.

No. 87-C-1051-C

FILED
IN OPEN COURT

OCT 24 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came on for consideration of the motions for partial summary judgment of defendants. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed simultaneously herein,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that partial summary judgment is hereby entered for defendants and against plaintiff, as set forth in the Court's contemporaneous Order.

IT IS SO ORDERED this 24 day of October, 1988.

H. DALE COOK
Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 24 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEWIGHT E. BELL,

Defendant.

CIVIL ACTION NO. 88-C-693-C

DEFAULT JUDGMENT

This matter comes on for consideration this 24th day of October, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Dewight E. Bell, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Dewight E. Bell, acknowledged receipt of Summons and Complaint on August 17, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Dewight E. Bell, for the principal sum of $691.42, plus interest at the rate of 9 percent per annum and administrative costs of $.63 per month from February 14, 1986, and $.70 per month from February 1, 1987, until judgment, plus interest thereafter at the current legal rate of 8.15 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

PB/mp

C-11

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GERALD GRIMES, ET. AL.

Plaintiff(s),

vs.

F.D.I.C., ET. AL.

Defendant(s).

No. 88-C-228-C

FILED

OCT 24 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 24 day of October, 1988.

UNITED STATES DISTRICT JUDGE

24

FILED
OCT 21 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MOTOR CARRIER AUDIT & COLLECTION CO.,

Plaintiff,

vs.

SKAGGS ALPHA BETA, INC.,

Defendant,

No. 87-C-888-B

O R D E R

This matter comes before the Court on Plaintiff Motor Carrier Audit & Collection Co.'s Motion to Dismiss Defendant Skaggs Alpha Beta, Inc.'s Counterclaim and on Plaintiff's Motion for Summary Judgment on its claim for relief.

Plaintiff originally filed this action on October 29, 1987 requesting full payment of rates set forth in Interstate Commerce Commission (ICC) tariffs for services rendered by Regional Distribution System. Plaintiff is the assignee of the freight bills and accounts receivable of Regional Distribution System (RDI). Plaintiff discloses Regional Distribution System agreed to charge Defendant less than the lawful rates on file with the ICC and Defendant has paid this lesser amount. Plaintiff sues for the balance of $30,378.61.

Defendant's Amended Answer and Counterclaim alleges RDI was to file documents necessary to establish a filed rate for the services rendered. Defendant contends since RDI failed to do this, RDI is liable for "bad faith tortious breach of the contract." Defendant contends Plaintiff as assignee is subject to

counterclaims of Defendant against RDI.

Plaintiff moves to dismiss the counterclaim contending it fails to state a claim on which relief can be granted under Fed.R.Civ.P. 12(b)(6). Plaintiff states that even if RDI agreed to different rates or to file different rates, the shipper must pay the published tariff under 49 U.S.C. §10761.

49 U.S.C. §10761 specifically states that a carrier may only charge the rate in the tariff in effect and:

> "That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device."

The United States Supreme Court has held:

> "'Neither the intentional nor accidental misstatement of the applicable published rate will bind the carrier or shipper. The lawful rate is that which the carrier must exact and that which the shipper must pay. The shipper's knowledge of the lawful rate is conclusively presumed, and the carrier may not be required to surrender the goods carried upon the payment of the rate paid, if that was less than the lawful rate, until the full legal rate has been paid." Louisville v. Maxwell, 237 U.S. 94 (1915), quoting from Kansas City Southern v. Carl, 227 U.S. 639 (1913).

Modern courts still follow this ruling. The Seventh Circuit has held that ordinary contract law does not apply in this situation.

> "[T]he system of regulation created by Congress when it passed the first Interstate Commerce Act in 1887, a system unchanged (so far as is relevant to this case) to this day, limits the freedom of contract between shippers and

> carriers.... There is no judicial power of equitable reformation of tariffs as of ordinary contracts." Western Transportation v. Wilson, 682 F.2d 1227 (7th Cir. 1982).

A claim of fraud will not even alter the strict rule concerning payment of the tariff rate. Missouri Pacific v. Rutledge Oil, 669 F.2d 557 (8th Cir. 1982); Consolidated Freightways v. Terry Tuck, 612 F.2d 465 (9th Cir. 1980).

At the hearing on the motions defense counsel urged the Court to consider Rebel Motor v. Southern Beverage Co., 673 F.Supp. 785 (M.D. La. 1987), for the proposition that the Court should transfer this case to the ICC to determine the reasonableness of the rate. The Court has searched the record and finds no issue of "reasonableness of the rate" raised.

To survive a motion for summary judgment, Defendant "must establish that there is a genuine issue of material facts. Defendant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushuta v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

Therefore, the Court hereby grants Plaintiff's motion for summary judgment on its claim for $30,378.61 against Defendant.

Defendant's counterclaim is dismissed.

IT IS SO ORDERED this 20th day of Oct., 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. RICKY JOE GOLAY; GLENNA FAY GOLAY; COLONIAL MORTGAGE SERVICE COMPANY; COUNTY TREASURER, Osage County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 87-C-780-B

DEFICIENCY JUDGMENT

Now on this 21 day of October, 1988, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 14th day of September, 1988, and a copy of said Motion being mailed to Ricky Joe Golay and Glenna Fay Golay, Route 3, Box 461-G, Ponca City, Oklahoma 74601, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendants, Ricky Joe Golay and Glenna Fay Golay, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on January 25, 1988, in favor of the Plaintiff United States of America, and against the Defendants, Ricky Joe Golay and Glenna Fay Golay, with interest and costs to date of sale is $45,022.72.

The Court further finds that the appraised value of the real property at the time of sale was $8,800.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered January 25, 1988, for the sum of $7,854.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 12th day of October, 1988.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Ricky Joe Golay and Glenna Fay Golay, as follows:

Principal Balance as of 01/25/88	$35,531.98
Interest	8,193.35
Late Charges to Date of Judgment	177.79
Appraisal by Agency	358.90
Management Broker Fees to Date of Sale	280.00
Abstracting	167.50
Taxes for 1987	97.20
Insurance	216.00
TOTAL	$45,022.72
Less Credit of Appraised Value	- 8,800.00
DEFICIENCY	$36,222.72

plus interest on said deficiency judgment at the legal rate of 8.15 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, Ricky Joe Golay and Glenna Fay Golay, a deficiency judgment in the amount of $36,222.72, plus interest at the legal rate of 8.15 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	FILED
	)	
Plaintiff,	)	OCT 21 1988
	)	
vs.	)	Jack C. Silver, Clerk
	)	U.S. DISTRICT COURT
MARC A. ROBERTS; DOROTHY A. ROBERTS; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; BENEFICIAL OKLAHOMA, INC.,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 87-C-823-B

DEFICIENCY JUDGMENT

Now on this 21 day of October, 1988, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 20th day of September, 1988, and a copy of said Motion being mailed to Marc A. Roberts and Dorothy A. Roberts, 112 South 35th West Avenue, Tulsa, Oklahoma 74127, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, Marc A. Roberts and Dorothy A. Roberts, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on March 1, 1988, in favor of the Plaintiff United States of America, and against the

Defendants, Marc A. Roberts and Dorothy A. Roberts, with interest and costs to date of sale is $26,909.36.

The Court further finds that the appraised value of the real property at the time of sale was $15,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered March 1, 1988, for the sum of $13,387.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 12th day of October, 1988.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Marc A. Roberts and Dorothy A. Roberts, as follows:

Principal Balance as of 03/01/88	$21,971.46
Interest	4,290.42
Late Charges to Date of Judgment	120.48
Appraisal by Agency	350.00
Management Broker Fees to Date of Sale	75.00
Abstracting	102.00
TOTAL	$26,909.36
Less Credit of Appraised Value	- 15,000.00
DEFICIENCY	$11,909.36

plus interest on said deficiency judgment at the legal rate of 8.15 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, Marc A. Roberts and Dorothy A. Roberts, a deficiency judgment in the amount of $11,909.36, plus interest at the legal rate of 8.15 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

NNB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BEAUTY GROW PRODUCTS, INC., a corporation, and L. C. "LEE" COBB and FAYE E. COBB, individuals,

Plaintiffs,

vs.

No. 87-C-995-B

FEDERAL DEPOSIT INSURANCE CORPORATION in its Capacity as Liquidating Agent of the Citizens Bank, Drumright, Oklahoma,

Defendant,

and

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Third-Party Plaintiff,

v.

BEAUTY GROW PRODUCTS, INC., a corporation; and L. C. "LEE" COBB and FAYE E. COBB, individuals,

Third-Party Defendants.

J U D G M E N T

In accordance with the Order filed September 6, 1988, the Court hereby enters judgment in favor of FDIC in its corporate capacity and enters judgment against Beauty Grow Products, Inc., L.C. "Lee" Cobb and Faye E. Cobb, in the amount of Two Hundred Eighty Two Thousand Ten and 42/100 Dollars ($282,010.42), with interest at the legal rate of 8.15% from this date until paid.

Costs and attorney fees will be considered only upon proper application under Local Rule 6.

DATED this 21 day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 21 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

MOTOR CARRIER AUDIT & COLLECTION CO.,

Plaintiff,

vs.

SKAGGS ALPHA BETA, INC.,

Defendant,

No. 87-C-888-B

J U D G M E N T

In accordance with the Order filed this date, Judgment is hereby entered in favor of Plaintiff Motor Carrier Audit & Collection Co. against the Defendant, Skaggs Alpha Beta, Inc., in the amount of Thirty Thousand Three Hundred Seventy Eight and 61/100 Dollars ($30,378.61) with interest thereon to run at the legal rate of 8.15% per annum from this date until paid. Costs and attorney fees will be considered only after proper application under Local Rule 6.

DATED this 21 day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED
OCT 21 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BITUMINOUS INSURANCE COMPANIES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 88-C-776-B
	)	
PETROLEUM MARKETERS, LTD., and KOOL-VENT ALUMINUM AWNING COMPANY, INC.,	)	
	)	
Defendant.	)	

ORDER

Now on this 21 day of October, 1988, pursuant to the provisions of Rule 41(2), Federal Rules of Civil Procedure, and upon the Motion of the Plaintiff, Bituminous Insurance Companies,

IT IS ORDERED that this action be, and hereby is, dismissed without prejudice as to the Defendant, Petroleum Marketers, Ltd., with all costs to be borne by the Plaintiff.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

APPROVED AS TO FORM:

LOONEY, NICHOLS, JOHNSON & HAYES

Burton J. Johnson, OBA #4671
Richard B. O'Connor, OBA #10425
528 N.W. 12th Street
Oklahoma City, Oklahoma 73103
(405) 235-7641

ATTORNEYS FOR PLAINTIFF,
BITUMINOUS INSURANCE COMPANIES

TGM303-71

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 21 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

FORD MOTOR CREDIT COMPANY, Plaintiff, vs. MARK DORRIS; CLIFF RICHARDSON; SUSAN FOWLER; MITTYE NEELY and; JAN NEELY; each individually, jointly and d/b/a ARROW FINANCIAL SERVICES; COMMUNICATION FEDERAL CREDIT UNION; SHELLI K. WILTSHIRE; JOHN T. SMITH; JERRY W. DYKES, LOYD H. McDANIEL and TERRY C. McDANIEL, individuals; Defendants.	)	No. 88-C-975-B

JUDGMENT OF PERMANENT INJUNCTION,
DISMISSAL OF CLAIMS FOR DAMAGES AND
DISMISSAL WITHOUT PREJUDICE OF REPLEVIN PROCEEDINGS

THIS MATTER coming on for hearing this 21 day of October, 1988, upon the Stipulation of the parties, the Court having considered the pleadings and statement of counsel, and the Court having concluded that the Plaintiff is entitled to a Judgment for the relief prayed for in the Complaint to the extent that it is hereafter granted, it is

ORDERED, ADJUDGED AND DECREED that the Defendants, Mark Dorris, Cliff Richardson, a/k/a Cliff Richison, Susan Fowler, Mittye Neely, a/k/a Mittye Neeley, and Jan Neeley, each individually, jointly and/or d/b/a Arrow Financial Services, their agents, servants, employees or any of them, and all parties acting in concert or participation with them or any of them are hereby enjoined from engaging in:

1. The sale, brokering, exchanging, renting (leasing), renting with option to purchase, offering or attempting to offer to negotiate a sale or exchange of an interest in used motor vehicles, whether such motor vehicles are owned by such person without first obtaining a license therefore as may be provided by the laws of the State of Oklahoma (Okla. Stat. tit. 47, §581 et seq.).

2. Selling, providing, performing or representing that he/she can or will sell, provide or perform in return for the payment of money or other consideration any of the following services:

a. Improving a person's credit rating, record or history;

b. Obtaining extension of credit for the seller/buyer, lessor/lessee, bailer/bailee of automobiles; or

c. Providing advice or assistance in regards to subparagraphs (a) and (b) of this paragraph, or of any other act in violation of Okla. Stat. tit. 24, §131 et seq.

3. Inducing any person to enter into any contract of sale, rental, lease, bailment, bailment with option to purchase, the purpose of which is to induce such person to part with possession of his or her vehicle in exchange for the promise of assuming retail installment loan payments or insurance payments either directly or indirectly through third persons or by any person acting in concert or participation with them, and the purpose of which is to cause the transfer of possession or ownership of vehicles to third persons directly or indirectly under any form of agreement whereby the third person directly or indirectly

agrees to assume, make or pay retail installment loan payments or insurance payments to, for or on behalf of any of the aforenamed Defendants or the original owners of such vehicles.

4. To enter into any agreement with any person as lessee/buyer/bailee, the purpose of which is to grant to such lessee/bailee/buyer the permissive use of any vehicle owned by others and not owned by the Defendants.

5. To require any payment of a commission, bailment fee, rental fee, finders fee or any other form of fee or charge by a third person (not the original owner of the vehicle) in order to compensate for the use, lease, sale, bailment, transfer or possession of any motor vehicle not owned by any of the aforenamed Defendants.

6. From inducing or causing any person to default on retail installment loan payments or insurance payments due to insurance companies, financial institutions, credit companies, state and national savings and banking associations on vehicles (cars/trucks) secured to them who hold or retain a security interest or lien on such vehicle

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff having abandoned any claim for money damages under Counts II and III, no recovery of damages is awarded.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Count I against the Defendants, Shelli K. Wiltshire, John T. Smith, Jerry W. Dykes, Loyd H. McDaniel and Terry C. McDaniel, each individually, are dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff and all Defendants each bear their own costs.

Dated at Tulsa, Oklahoma, October 21, 1988.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

STIPULATED AND APPROVED FOR ENTRY:

Thomas G. Marsh (OBA #5706)
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Richison, Susan Fowler,
Mittye Neely, a/k/a
Mittye Neeley,
Jan Neeley, each
individually, jointly
and d/b/a Arrow
Financial Services

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Attorney for Defendats,
Loyd H. McDaniel and
Terry C. McDaniel

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN L. HANKS; DEBORAH LYNNE HANKS; SECURITY PACIFIC FINANCE CORPORATION; STATE OF OKLAHOMA ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED OCT 21 1988 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 88-C-546-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21 day of October, 1988. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Doris L. Fransein, Assistant District Attorney, Tulsa County, Oklahoma; the Defendants, John L. Hanks and Deborah Lynne Hanks, appear by their attorney Eric W. Spooner; the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, appears by its attorney J. W. Stevenson; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney Robert B. Struble; and the Defendant, Security Pacific Finance Corporation, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, Deborah Lynne Hanks, acknowledged receipt of Summons and Complaint on June 27, 1988; that the Defendant, Security Pacific Finance Corporation, acknowledged receipt of Summons and Complaint on June 21, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, acknowledged receipt of Summons and Complaint on June 14, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on June 14, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 21, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 14, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 5, 1988; that the Defendants, John L. Hanks and Deborah Lynne Hanks, filed their Answer and Advice of Bankruptcy herein on July 28, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, filed its Answer and Cross-Petition herein on July 5, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition herein on July 8, 1988; and that the Defendant, Security Pacific Finance Corporation, has failed to answer and its default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 28, 1988, the Defendants, John L. Hanks and Deborah Lynne Hanks, filed their Advice of Bankruptcy. Defendants, John L. Hanks and Deborah Lynne Hanks, were discharged of all dischargeable debts on January 7, 1988 by the United States Bankruptcy Court, Northern District of Oklahoma in Case No. 87-02461-W, Chapter 7, and on April 19, 1988, said bankruptcy was closed. Defendants, John L. Hanks and Deborah Lynne Hanks, consent to entry of judgment herein as follows.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Nineteen (19), Block Six (6), OAK CREST THIRD ADDITION to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 23, 1986, the Defendants, John L. Hanks and Deborah Lynne Hanks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $42,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, John L. Hanks and Deborah Lynne Hanks, executed and delivered to the

United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 23, 1986, covering the above-described property. Said mortgage was recorded on May 23, 1986, in Book 4944, Page 931, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, John L. Hanks and Deborah Lynne Hanks, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default continued, and that by reason thereof the Defendants, John L. Hanks and Deborah Lynne Hanks, became indebted to the Plaintiff in the principal sum of $41,846.95, plus interest at the rate of 10 percent per annum from March 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, has a lien on the property which is the subject matter of this action by virtue of unemployment compensation tax warrant number 00054187 dated June 18, 1987, and filed of record in Tulsa County, Oklahoma, on August 18, 1987, in the amount of $564.21 as of June 30, 1988 together with interest at the rate of one percent (1%) per month on the said taxes until paid. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Sales Tax Warrant No. STS00049696 dated January 12, 1972, filed of record in Tulsa County, Oklahoma, on February 5, 1973, in the amount of $375.22, plus penalties and interest accrued and accruing. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Security Pacific Finance Corporation, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, John L. Hanks and Deborah Lynne Hanks, in the principal sum of $41,846.95, plus interest at the rate of 10 percent per annum from March 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, and Security Pacific Finance Corporation, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security

Commission, have and recover judgment in rem in the amount of $564.21 as of June 30, 1988 together with interest at the rate of one percent (1%) per month on the said taxes until paid on unemployment compensation tax warrant number 00054187 dated June 18, 1987, and filed of record in Tulsa County, Oklahoma, on August 18, 1987.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in rem in the amount of $375.22, plus penalties and interest accrued and accruing on Sales Tax Warrant No. STS00049696 dated January 12, 1972, filed of record in Tulsa County, Oklahoma, on February 5, 1973.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in

the amount of $375.22, plus penalties and interest accrued and accruing;

Fourth:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, in the amount of $564.21 as of June 30, 1988, together with interest at the rate of one percent (1%) per month until paid.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

United States District Court) ss
Northern District of Oklahoma)
I hereby certify that the foregoing is a true copy of the original on file in this court.
Jack C. Silver, Clerk
By _____ Deputy

APPROVED:

TONY M. GRAHAM
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney

ERIC W. SPOONER
Attorney for Defendants,
John L. Hanks and Deborah Lynne Hanks

DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

J. W. STEVENSON
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Employment Security Commission

ROBERT B. STRUBLE
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

TGM303-64

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FORD MOTOR CREDIT COMPANY,

Plaintiff,

vs.

No. 88-C-975-B

MARK DORRIS; CLIFF RICHARDSON; SUSAN FOWLER; MITTYE NEELY and; JAN NEELY; each individually, jointly and d/b/a ARROW FINANCIAL SERVICES; COMMUNICATION FEDERAL CREDIT UNION; SHELLI K. WILTSHIRE; JOHN T. SMITH; JERRY W. DYKES, LOYD H. McDANIEL and TERRY C. McDANIEL, individuals;

Defendants.

STIPULATED ORDER OF PERMANENT INJUNCTION
AS TO ADDITIONAL DEFENDANT JAN NEELEY

UPON the agreement of the parties to a stipulated Order for Injunction, it is by this Court, this 21 day of ~~September~~ Oct., 1988,

ORDERED that the Defendant, Jan Neeley, her agents, servants, employees or any of them, and all parties acting in concert or participation with them or any of them are hereby enjoined from engaging in:

1. The sale, brokering, exchanging, renting (leasing), renting with option to purchase, offering or attempting to offer to negotiate a sale or exchange of an interest in used motor vehicles, whether such motor vehicles are owned by such person without first obtaining a license therefore as may be provided by the laws of the State of Oklahoma (Okla. Stat. tit. 47, §581 et seq.).

30

2. Selling, providing, performing or representing that he/she can or will sell, provide or perform in return for the payment of money or other consideration any of the following services:

a. Improving a person's credit rating, record or history;

b. Obtaining extension of credit for the seller/buyer, lessor/lessee, bailer/bailee of automobiles; or

c. Providing advice or assistance in regards to subparagraphs (a) and (b) of this paragraph, or of any other act in violation of Okla. Stat. tit. 24, §131 et seq.

3. Inducing any person to enter into any contract of sale, rental, lease, bailment, bailment with option to purchase, the purpose of which is to induce such person to part with possession of his or her vehicle in exchange for the promise of assuming retail installment loan payments or insurance payments either directly or indirectly through third persons or by any person acting in concert or participation with them, and the purpose of which is to cause the transfer of possession or ownership of vehicles to third persons directly or indirectly under any form of agreement whereby the third person directly or indirectly agrees to assume, make or pay retail installment loan payments or insurance payments to, for or on behalf of any of the aforenamed Defendants or the original owners of such vehicles.

4. To enter into any agreement with any person as lessee/buyer/bailee, the purpose of which is to grant to such lessee/bailee/buyer the permissive use of any vehicle owned by

5. To require any payment of a commission, bailment fee, rental fee, finders fee or any other form of fee or charge by a third person (not the original owner of the vehicle) in order to compensate for the use, lease, sale, bailment, transfer or possession of any motor vehicle not owned by the Defendant, Jan Neeley.

6. From inducing or causing any person to default on retail installment loan payments or insurance payments due to insurance companies, financial institutions, credit companies, state and national savings and banking associations on vehicles (cars/trucks) secured to them who hold or retain a security interest or lien on such vehicle

Dated at Tulsa, Oklahoma, ~~September~~ Oct 21ST 1988.

UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

Thomas G. Marsh (OBA #5706)
MARSH, ROBERTS, MARRS,
SHACKLETT & FEARS, P.C.
606 ONEOK Plaza
100 West Fifth
Tulsa, Oklahoma 74103
(918) 587-0141
Attorneys for Plaintiff, Ford
Motor Credit Company

JAN NEELEY, DEFENDANT

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Before me, the undersigned Notary Public, in and for said County and State, on this 17th day of September, 1988, personally appeared JAN NEELEY, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Rona Gutierrez
Notary Public

My Commission Expires:

10-28-89

FILED
OCT 20 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CLIFFORD THOMAS,

Plaintiff,

vs.

THE CITY OF DEWEY, OKLAHOMA, GARY TAYLOR, JESS HOUSE, RAYMOND SPENCER and LESLIE PURDUM,

Defendants.

Case No. 87-C-909-B

J U D G M E N T

In keeping with the Court's Order of October 18, 1988, sustaining the Motion for Summary Judgment of Defendants, the City of Dewey, Oklahoma, Gary Taylor, Jess House, Raymond Spencer and Leslie Purdum, judgment is hereby entered in favor of the City of Dewey, Oklahoma, Gary Taylor, Jess House, Raymond Spencer and Leslie Purdum, and against Plaintiff Clifford Thomas. The costs are to be paid by the Plaintiff and the parties are to pay their respective attorney's fees.

Dated this 21st day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONTINENTAL CASUALTY COMPANY, an Illinois corporation,

Plaintiff,

vs.

LONE STAR GAS COMPANY; NIPAK, INC.; ENSERCH CORPORATION; HARBOR INSURANCE COMPANY; HARTFORD ACCIDENT & INDEMNITY COMPANY; JEREMY HEW PHILLIPS, AN UNDERWRITER AT LLOYD'S, LONDON ON BEHALF OF HIMSELF AND ALL OTHER UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NOS. UC 0003, UD 0020, UE 0041, JFX 0007, UJL 0080, ULL 0691, UPU 0200 AND UQU 0125; CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO CN-51988/POLICY NO. 541801/2; INSCO, LTD.; AND CERTAIN LONDON MARKET INSURANCE COMPANIES SUBSCRIBING TO POLICY NOS. UC 0003, UD 0020, UE 0041, JFX 0007, UJL 0080, ULL 0691, UPU 0200, UQU 0125, AND CN-51988/ POLICY NO. 541801/2,

Defendants.

No. 87-C-517-C

FILED
OCT 3 0 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL

COME NOW the Plaintiff and all Defendants and stipulate and urge this Court to approve a Dismissal Without Prejudice on the following grounds:

1. Plaintiff dismisses its cause of action without prejudice.

2. All parties agree and stipulate that if any further actions are filed by either Plaintiff or Defendants as a result of this claim, that the exclusive jurisdiction of said actions

will be in the United States District Court for the Northern District of Oklahoma.

3. Plaintiff and all Defendants shall have the rights guaranteed plaintiffs on a Dismissal Without Prejudice pursuant to Title 12 Oklahoma Statutes, Section 100.

4. All parties agree that they will bear their own costs to the date of filing of this Stipulation for Dismissal, in respect to this action.

5. Defendants Lone Star Gas Co., Enserch Corporation, and Nipak, Inc., agree to waive any rights they have as to any bad faith claims against any of the parties up to the point of the approval of and filing of this Stipulation for Dismissal.

6. Defendant Lloyd's agrees to accept service in any later action on this claim by service on their counsel of record, Joe Glass, of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

BAKER, BAKER & SMITH

and

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE, a professional corporation

By: _____

Daryl L. Gotcher
Michael T. Keester
Attorneys for Defendant,
Harbor Insurance Company

DATED: _____

HOLLIMAN, LANGHOLTZ, RUNNELS & DORWART

By: _____
J. Michael Medina
Attorney for Defendants, Lone Star Gas Co., Enserch Corporation, and Nipak, Inc.

DATED: _____

ROGERS, HONN & ASSOCIATES

By: _____
Richard C. Honn
Attorney for Defendant, Hartford Accident and Indemnity Company

DATED: Oct. 3, 1988

MENDES & MOUNT

and

THOMAS, GLASS, ATKINSON, HASKINS, NELLIS & BOUDREAUX

By: _____
Joseph F. Glass
Attorneys for Defendant, Underwriters at Lloyd's

DATED: Oct 10, 1988

SEDGWICK, DETERT, MORAN & ARNOLD

and

SECREST & HILL

By: _____

W. Michael Hill
Attorney for Plaintiff, Continental Casualty Co.

DATED: 10-12-88

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHUCK NELSON and JERRY COLEMAN, co-partners d/b/under the firm name and style COUNTRY AIR, and STEWART KIMMEL, an individual,

Plaintiffs,

VS.

HELIO AIRCRAFT, INC., LOREN ABBOTT, LARRY SMITH, CHUCK DAVIS, V. BRUCE THOMPSON, AREOSPACE TECHNOLOGIES, INC., GARY ADAMS, and ADAMS ENERGY COMPANY,

Defendants.

Case No. 86-C-286-C

FILED
OCT 20 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter comes on before the Court by agreement between the Plaintiffs and Defendant, Helio Aircraft, Inc., and this Court finds the following:

(1) The above mentioned parties have settled and compromised their claims by requesting this Court to enter judgment in favor of the Plaintiffs and against Defendant Helio Aircraft, Inc.

(2) The amount of the judgment is to be Twenty Thousand Dollars ($20,000.00), to be apportioned as follows: $10,000.00 to Chuck Nelson and Jerry Coleman d/b/a County Air; and, $10,000.00 to Stewart Kimmel, an individual.

(3) In addition to the $20,000.00 Plaintiffs are awarded reasonable attorney fees and costs associated with this action.

IT IS ORDERED that the judgment rendered in the amount of $20,000.00 plus attorney fees and costs by the court in the above entitled action on 20th day of October, 1988, in favor of Plaintiffs against the Defendant Helio Aircraft, Inc. be entered as a final judgment, and the clerk is directed to enter such judgment forwith.

UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM:

J. MICHAEL BUSCH, OBA 10227
ATTORNEY FOR PLAINTIFFS
917 East Taft
P. O. Box 1404
Sapulpa, Ok. 74067-1404

TIMOTHY TRUMP
ATTORNEY FOR DEFENDANT
HELIO AIRCRAFT, INC.
2100 Mid-Continent Tower
401 S. Boston
Tulsa, Ok. 74103

2759-030

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OIL CAPITAL PRINTING COMPANY, INC., an Oklahoma corporation, and ROBERT D. NASH,	)	FILED
Plaintiffs,	)	OCT 20 1988
vs.	)	Jack C. Silver, Clerk U.S. DISTRICT COURT
UNITED STATES OF AMERICA,	)	
Defendant.	)	Civil No. 86-C-114-C

JUDGMENT

Based upon the Stipulation for Entry of Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Oil Capital Printing Company, Inc. and Robert D. Nash, shall recover from the Defendant, United States of America, the sum of $41,949.00 in tax, and $30,596.65 in interest paid, plus interest thereon according to law.

DATED this 17 day of October, 1988.

UNITED STATES DISTRICT JUDGE

William E. Farrior
Barrow, Gaddis, Griffith & Grimm
610 South Main, Suite 300
Tulsa, OK 74119
(918) 584-1600
Attorneys for Plaintiffs

WEF2/bg:OCJ

FILED
OCT 25 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH EDWIN ROBERTS and ANNA LAURA ROBERTS,

Plaintiffs,

vs.

COMMERCIAL UNION INSURANCE COMPANY,

Defendant.

No. 88-C-540-B

O R D E R

This matter comes before the Court on Defendant Commercial Union Insurance Company's motion to dismiss this case for lack of subject matter jurisdiction.

Plaintiff Joseph Edwin Roberts was injured while working on the job July 8, 1985. His employer, Copeland Steel Erectors, Inc. had workers' compensation insurance with Defendant Commercial Union Insurance Company. Temporary total disability payments were made from July 8, 1985 to July 22, 1985. Benefits were reinstated on November 18, 1985 and were terminated December 29, 1986. Plaintiff contends that his benefits were terminated in December 1986 based on a medical report which he received in the mail prior to his appointment to see the doctor who made the report.

Plaintiff filed a worker's compensation claim in the Workers' Compensation Court in September 1987 and filed the present action in June 1988 for breach of good faith and fair dealing. Defendant argues that this Court lacks subject matter jurisdiction over the claim filed in this court and the exclusive remedy lies within the

Workers' Compensation Court of the State of Oklahoma. Defendant cites 85 Okl.St.Ann. §§ 11 and 12:

> "Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury . . . . The liability prescribed in Section 11 of this Title shall be exclusive and in place of all other liability of the employer and any of his employees, . . . at common law or otherwise, for such injury, loss of services, or death to the employee, . . ."

The Workers' Compensation Act provides penalties for failure to compensate. 85 Okl.St.Ann. §42 states:

> "If payment of compensation or an installment payment of compensation due under the terms of an award, . . . is not made within ten (10) days after the same is due . . . , the Court may order a certified copy of the award to be filed in the office of the court clerk and the county clerk of any county, which award . . . shall be entered on the judgment docket of the district court, and shall have the same force and be subject to the same law as judgments of the district court. Any compensation awarded and all payments thereof directed to be made by order of the Court shall bear interest at the rate of eighteen percent (18%) per year from the date ordered paid by the Court until the date of satisfaction. Upon the filing of the certified copy of the Court's award a writ of execution shall issue and process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by the Code of Civil Procedure of the State of Oklahoma. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of the Workers' Compensation Act, the Insurance Commissioner, on the request of a Judge of the Court or the Administrator, shall suspend or

> revoke the license or authority of such insurance carrier to do a compensation business in this state."

Rule 14 of the Workers' Compensation Act provides:

> "If the employer fails to continue payment of temporary compensation benefits after a Form 12 has been properly filed, the trial judge shall, at the time of trial, order the reinstatement of such benefits retroactive to the date benefits were terminated because of the employer's failure to follow this court rule. A fifteen percent (15%) penalty on all unpaid benefits shall be assessed against the employer at the date of trial. Further, the employer shall be required to file another Form 11 and fully comply with this rule before a trial on the motion to terminate temporary compensation will be conducted."

Plaintiff points out that 85 Okl.St.Ann. §101 provides all penalties under the Workers' Compensation Act are paid into the state treasury, not to Plaintiff. Although the penalty under Rule 14 of the Workers' Compensation Act may apply, the Court does not agree that the 18% interest imposed under 85 Okl.St.Ann. §42 falls under 85 Okl.St.Ann. §101.

Plaintiff points out this is not a claim against his employer for "such injury, loss of services or death of the employee" as outlined in the statute, but a claim for recovery for the intentional bad faith breach by the insurance company. The Oklahoma Supreme Court has not addressed the issue. Other courts have held an independent claim for bad faith breach is not under the exclusive provisions of the Workers' Compensation laws similar to Oklahoma's laws. Aranda v. Insurance Co. of North America, 748 S.W. 2d 210 (Tex. 1988); and Carpentino v. Transport Insurance Co.,

609 F.Supp. 556, 561 (Conn. 1985).

Recently the Supreme Court of Texas in Aranda v. Insurance Co. of North America, supra, held that first, the exclusivity provision of the Workers' Compensation Act did not include a carrier's breach of duty of good faith. The court stated:

> "Injury from the carrier's conduct arises out of the contractual relationship between the carrier and the employee and is sustained after the job-related injury. This court has recognized that an employee may have one claim against his employer under the Act and another claim at common law for an intentional tort.
>
> Accordingly, we hold that the exclusivity provisions of the Workers' Compensation Act does not bar a claim against a carrier for breach of the duty of good faith and fair dealing or intentional misconduct in the processing of a compensation claim. A claimant is permitted to recover when he shows that the carrier's breach of the duty of good faith and fair dealing or the carrier's intentional act is separate from the compensable claim and produced an independent injury." (citations omitted).

Second, the court held the penalty provisions for nonpayment contained within the Workers' Compensation Act which are similar to Oklahoma's did not afford "relief to the claimant when a carrier breaches the duty of good faith and fair dealing by refusing to pay benefits for a compensable claim until ordered to do so by the Industrial Accident Board." The court explained:

> "Even if these provisions addressed such misconduct, the Act does not contemplate that the failure of a carrier to act in good faith or the carrier's intentional tort can be meaningfully redressed by the mere addition of 12% or 15% to the past due compensation. Such nominal penalties are of questionable value as an incentive for the carrier to act reasonably in processing an employee's claim."

The Court of Appeals of Oklahoma has specifically held:

> "The Workers' Compensation statutes were designed to provide the exclusive remedy for accidental injuries sustained during the course and scope of a worker's employment. The statutes were not designed to shield employers or co-employees from willful, intentional or even violent conduct." Thompson v. Madison Machinery Co., 684 P.2d 565 (Okla. App. 1984).

The Tenth Circuit Court of Appeals has also held that the exclusivity of the Act is only for "accidental" injury.

> "An 'intentional' injury is not 'accidental' for purposes of the Act however and is therefore not covered by the Act. That being the case an employer can be held liable at common law for injuries "intentionally' inflicted on a covered employee." Tyner v. Fort Howard Paper Co., 708 F.2d 517 (10th Cir. 1983).

However, Judge Seay in Gilbert v. Home Indemnity Co., No. 86-048-C (E.D.Okla. 1986) held that concerning a claim for bad faith breach of an insurance contract "the Oklahoma Workers' Compensation Act provides the exclusive remedy for an injured employee for compensation against an employer and the employer's carrier. The appropriate relief sought by plaintiff against defendant is under the Oklahoma Workers' Compensation Act."

The Tenth Circuit Court of Appeals found that the New Mexico Workers' Compensation Act provided the exclusive remedy for a bad faith denial of a workers' compensation claim. The court stated "Plaintiff's contention that the tort claims asserted in this action are separate and apart from the Plaintiff's claims for compensation under the Workman's Compensation Act is without

merit." The court reasoned:

> "The Act clearly contemplates that an employer may deny a workman's claim for compensation benefits, but if he does, the Act provides the workman with a remedy. The remedy is the same whether the denial is made in good faith or bad faith."

Courts in other jurisdictions have reached similar results. Whitten v. American Mutual Liability, 468 F.Supp. 470 (Dist.S.C. 1977); Young v. United States Fidelity and Guaranty Co., 588 S.W.2d 46 (Mo. 1979) (However the Missouri Act doubles the entire award for failure to compensate); Gonzales v. United States Fidelity, 659 P.2d 318 (N.M. 1983); Robertson v. Travelers Insurance Co., 448 N.E. 2d 866 (Ill. 1983).

This Court concludes the Oklahoma Workers' Compensation Act provides the exclusive remedy for Plaintiff until the Oklahoma legislature provides alternatives. Defendant's motion to dismiss is hereby sustained.

Plaintiff's appeal of the Magistrate's protective order staying discovery pending the outcome of this motion is moot.

IT IS SO ORDERED this 20th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 19 1989
U.S. DISTRICT COURT CLERK

SELECT INSURANCE COMPANY,

Plaintiff,

vs.

HASTY BRUMMEIT TRANSFER, INC., and MERRILL LYNCH RELOCATION SERVICES, INC.,

Defendants,

Case No. 88-C-680-E

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Select Insurance Company, and hereby dismisses the above referenced action with prejudice pursuant to a settlement agreement in this case and the three related cases currently pending before this Court.

Respectfully submitted,

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE, a professional corporation

By: Gregory K. Frizzell

Grayden Dean Luthey, Jr., OBA #5568
Gregory K. Frizzell, OBA #11089
3800 First National Tower
Tulsa, OK 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF SELECT INSURANCE COMPANY

CERTIFICATE OF MAILING

On this 19th day of October, 1988, I hereby certify that a true and correct copy of the foregoing instrument was mailed to:

James W. Tilly, Esq.
Tilly & Ward
1412 South Boston
Suite 715
Tulsa, Oklahoma 74119

Attorneys for Merrill Lynch
Relocation Services, Inc.

and

Mel Wyman, Esq.
Secrest & Hill
1515 East 71st Street
Suite 200
Tulsa, Oklahoma74136

Attorneys for Hasty Brummett
Transfer, Inc.

Gregory K. Frizzell

Gregory K. Frizzell

9300024003-046

DWE/vlc

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 19 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ANNA N. WHITE,

Plaintiff,

vs.

FAIRFAX OKLAHOMA PUBLIC WORKS AUTHORITY, a/k/a FAIRFAX MEMORIAL HOSPITAL; and LOIS GATES, an individual,

Defendants.

No. 87-C-262-E

ORDER OF DISMISSAL

NOW on this 19th day of October, 1988, the Court being advised of a compromise settlement having been reached between the plaintiff and defendants, Fairfax Public Works Authority, a/k/a Fairfax Memorial Hospital and Lois Gates, and those parties stipulating to a Dismissal With Prejudice, with each party to bear its own costs and attorney fees, the Court orders that the captioned case be dismissed with prejudice, with each party to bear its own costs and attorney fees.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AETNA CASUALTY AND SURETY COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 88-C-778-B
	)	
SECURITY NATIONAL BANK,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties hereto, by their respective counsel, and pursuant to Rule 41(a)(1), Fed. R. Civ. P., hereby stipulate and agree that the above-captioned cause be dismissed, with prejudice.

DATED this 11th day of Oct, 1988.

Respectfully submitted,

SECURITY NATIONAL BANK
OF SAPULPA

By: _____
Dwight W. Maulding
Chairman of the Board and CEO
315 E. Dewey
Sapulpa, OK 74066

COMFORT, LIPE & GREEN, P.C.

By: _____
Timothy T. Trump
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, OK 74103
(918) 599-9400

FC-87-269

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM EUGENE LOVE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. 87-C-340-E**
	)	
H. W. "CHIEF" JORDON, LEROY LINAM, BOB POWELL and **MAYES COUNTY,** a County Within The State of Oklahoma,	)	
	)	
Defendants.	)	

FILED

OCT 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

IN ACCORDANCE with the Court's order entered June 30, 1988, judgment is hereby entered in favor of Defendant Linam and Powell, and against the Plaintiff, William Eugene Love.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment shall be and hereby is entered in favor of Defendant Linam and Defendant Powell pursuant to the Court's order of June 30, 1988.

IT IS SO ORDERED this 19th day of Oct., 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

David L. Weatherford
Attorney for Plaintiff

67

John Lieber
Attorney for Defendant Linam

Rozia McKinney
Attorney for Defendant Powell

Enclosed Copy

MLN:mwc
10/14/88

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MCI TELECOMMUNICATIONS CORPORATION,

Plaintiff,

UNITED METRO MARKETING, INC. and METRO MARKETING, INC.,

Defendants.

Case No. 88-C-395C

FILED

OCT 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

NOW, on this 18 day of October, 1988, the above captioned matter comes on for hearing upon the plaintiff's Motion to Amend Judgment. The court having reviewed said motion and being fully advised in the premises finds and orders as follows:

Plaintiff's Motion to Amend Judgment is sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the default judgment granted on July 21, 1988, be amended to reflect that the rate of interest be applied to the judgment be calculated at the rate of 1.5% per annum as provided for under MCI F.C.C. Tariff No. 1, Section B-7.03.

It is so ordered this 18 day of October, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 19 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DAVID LORAN UNDERWOOD and BRENDA LEE GORDON, Personal Representatives of the Estate of Phyllis Rose Underwood, Deceased, and DAVID LORAN UNDERWOOD, individually, and BRENDA LEE GORDON, individually,

Plaintiffs,

vs.

No. 87-C-644-B (Consolidated)

BILLY JAKE MYERS d/b/a RHINELAND AGRI-SHIPPERS d/b/a MYERS GRAIN AND FERTILIZER, and PROTECTIVE CASUALTY INSURANCE, a Missouri corporation,

Defendants.

and

MILDRED REYNOLDS,

Plaintiff,

vs.

No. 87-C-645-B

BILLY JAKE MYERS d/b/a RHINELAND AGRI-SHIPPERS d/b/a MYERS GRAIN AND FERTILIZER, et al.,

Defendants,

and

CHARLES OVERGARD, Personal Representative of the Estate of Elizabeth Ann Overgard, Deceased, et al.,

Plaintiffs,

vs.

No. 87-C-819-B

BILLY JAKE MYERS d/b/a RHINELAND AGRI-SHIPPERS d/b/a MYERS GRAIN AND Fertilizer, et al.,

Defendants.

87

and

MYRTLE V. MORGAN,

Plaintiff,

vs. No. 87-C-863-B

BILLY JAKE MYERS d/b/a RHINELAND AGRI-SHIPPERS d/b/a MYERS GRAIN AND FERTILIZER, et al.,

Defendants.

and

HARRY CHEATWOOD, Personal Representative of the Estate of Pauline Thomas, Deceased,

Plaintiff,

vs. No. 87-C-923-B

PROTECTIVE CASUALTY INSURANCE COMPANY, a Missouri corporation, et al.,

Defendants.

and

VERA L. TRESLER,

Plaintiff,

vs. No. 88-C-544-E

BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS d/b/a MYERS GRAIN AND FERTILIZER, et al.,

Defendants.

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT OF VERA L. TRESLER, AND OVERRULING MOTION FOR SUMMARY JUDGMENT OF PROTECTIVE CASUALTY INSURANCE COMPANY

The reciprocal motions for summary judgment of Protective Casualty Insurance Company ("Protective") and Vera L. Tresler ("Tresler") in this consolidated action are before the Court for decision. Said motion of the claimant Tresler is joined by the other five claimants herein. For the reasons expressed below, the motion for summary judgment of the claimant Tresler is sustained and that of the Defendant Protective is overruled.

UNDISPUTED FACTS:

On June 22, 1987, a truck owned by Billy Jake Myers, d/b/a Rhineland Agri-Shippers d/b/a Myers Grain and Fertilizer ("Myers"), and being driven by its employee, Rodger Eugene East, on an interstate haul on U.S. Highway 60 near Nowata, Oklahoma, was involved in an accident with an automobile driven by Elizabeth Ann Overgard. The driver of the semi-truck negligently got on the wrong side of the road and collided head-on with the automobile in which the claimant Overgard as well as the automobile passengers, Phyllis Rose Underwood and Pauline Thomas, were killed, and passengers Mildred Reynolds, Vera Tresler and Myrtle Morgan were injured. Myers had obtained a liability insurance policy covering the semi-truck and driver with the Citizens National Life Assurance Company ("CNAC") in the sum of $1,000,000.00. CNAC (a New Mexico corporation) is insolvent and has been placed in receivership. James T. Odiorne is the duly appointed permanent ancillary receiver

in the District Court of Travis County, Texas, Case No. 430,454, styled The State of Texas, Plaintiff, vs. Citizens National Assurance Company, Defendant. In said action and pursuant to §4(b) of Article 21.28 of the Texas Insurance Code a permanent injunction and order has been entered providing that all persons are enjoined and restrained from interfering with the permanent ancillary receiver and from asserting any claims against the permanent ancillary receiver, except in the receivership proceedings. At the time of the subject truck-car accident, CNAC was not licensed to do business in Oklahoma. CNAC has not at any time filed an insurance bond, policy, or certificate of insurance with the Oklahoma Corporation Commission providing coverage for public liability or property damage to Billy Jake Myers.

To enable its insured Myers to operate its interstate trucks through the State of Oklahoma and to be provided with liability insurance coverage, CNAC entered into an agreement with Protective Casualty Insurance Company ("Protective") to make appropriate filings with the Oklahoma Corporation Commission. Protective issued a motor carrier bodily injury and property damage liability certificate of insurance to Billy Jake Myers which was in full force and effect on the date of the subject accident. (Protective's interpleader action attached as Exhibit A). A Form E "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" was filed with the Oklahoma Corporation Commission and certified to the public that Protective issued a liability insurance policy to Myers under policy numbered

GL 3293. (See Form "E", Protective's Exhibit "A"). Form E provides in pertinent part as follows:

> "This is to certify that Protective Casualty Insurance Company (hereinafter called "Company") of Post Office Box 80293, Baton Rouge, Louisiana 70809, has issued to Billy Jake Myers d/b/a Rhineland Agri-Shippers of Route 2, Box 36, Mundy, Texas 76371, a policy or policies of insurance, effective from 7/29/86, 12:01 a.m., standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.
>
> Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.
>
> * * *
>
> Countersigned at 9522 Brookline Ave., Baton Rouge, LA 70809 this 12th day of August, 1986.
>
> Insurance Company File No. GL 3293
>
> /s/ R. M. Cochran, Jr.
> Authorized Company Representative

The referenced "GL 3293" purported policy issued by Protective to Myers is the same specific number of the liability insurance coverage policy of CNAC providing coverage in the sum of $1,000,000 to Myers. (See Exhibit A to Brief of Claimant Tresler in Response to Protective's Motion for Summary Judgment.) Protective did not

issue a separate uniform motor carrier bodily injury and property damage insurance endorsement as the subject CNAC liability and insurance policy is the only separate insurance policy or endorsement that exists herein. (See Exhibit A to the Brief in Support of Motion for Partial Summary Judgment of Claimant Tresler).

In consideration for Protective issuing a liability insurance policy to Myers, as reflected by the filing of the Form E, CNAC agreed to "indemnify and reimburse Protective against any and all loss, costs, liability, damage and expense, including attorney fees, arising, resulting, sustained, or incurred by Protective by reason of having executed said Form E filings." CNAC further warranted that it would provide Protective adequate reinsurer's and reinsurance treaties to adequately cover and protect Protective from any loss, cost or expense involved in Protective's Form E filings. CNAC agreed to have Protective added as a named insured to all such reinsurance treaties. As consideration for filing its Form E as aforesaid, Protective was to receive $25,000 as an annual fee and $100.00 per Form E certificate filing. (Exhibit D to the Brief of James T. Odiorne, ancillary receiver for CNAC in Opposition to Protective's Interpleader Action).

Neither the agreement (Exhibit D to Odiorne's Brief in Opposition to Protective's Interpleader Action) nor the certificate of insurance (the Form E as quoted above) specifically provides that Protective's liability will be limited to $25,000.00.

OPINION AND CONCLUSIONS

By way of Protective's application to interplead and its motion for summary judgment, Protective urges that its coverage herein is limited to the $25,000 minimum coverage and cites 47 Okl.St.Ann. §169 and Rule 18(b) of the Corporation Commission of the State of Oklahoma, Rules and Regulations of Motor Carriers ("Rules") [now Rule 2.15(b) of the Rules and Regulations Adopted by the Corporation Commission on May 25, 1988 by Order No. 326296]. Said Corporation Commission rule clearly provides the minimum coverage permitted pursuant to §169 is $25,000.00.

47 Okl.St.Ann. §169 provides as follows:

> "No certificate or permit shall be issued by the Commission to any motor carrier until after such motor carrier shall have filed with the Commission a liability insurance policy or bond covering public liability and property damage, issued by some insurance or bonding company or insurance carrier authorized to do business in this state and which has complied with all of the requirements of the Commission, which bond or policy shall be approved by the Commission, and shall be in such sum and amount as fixed by a proper order of said Commission; and such liability and property damage insurance policy or bond shall bind the obligor thereunder to make compensation for injuries to, or death of, persons, and loss or damage to property, resulting from the operation of any such motor carrier for which such carrier is legally liable. A copy of such policy or bond shall be filed with said Commission, and, after judgment against the carrier for any such damage, the injured party may maintain an action upon such policy or bond to recover the same, and shall be a proper party so to do."

CNAC was not authorized to do business in the State of Oklahoma so CNAC could not file a liability insurance policy with

the Oklahoma Corporation Commission as required by §169. Protective was authorized to do business in the State of Oklahoma so Protective, by making the necessary filing, could obtain a Corporation Commission permit to allow Myers to operate trucks in the State of Oklahoma and furnish service therein. See, 47 Okl.St. Ann. §166.

Section 169 provides that a copy of the policy or bond is to be filed with the Commission. The language of Form E provides that:

> "[W]henever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon."

The Form E, as quoted above in the undisputed facts, provides in pertinent part that Protective has issued to Myers its policy of insurance effective from July 29, 1986 and continuing until cancelled as provided ". . . by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement ..." as provided by the law of the State of Oklahoma and the regulations promulgated by the Commission. The Form E then states the policy number of Protective's policy is GL 3293.

The evidence herein clearly establishes that there was one liability insurance policy and that was CNAC's $1,000,000.00 liability insurance policy (No. GL 3293) issued to Myers. As required in the Form E, Protective had not prepared or issued the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement. There was but one liability insurance policy or

endorsement and that was CNAC's referred to in the Form E by Protective by the policy number GL 3293.

The subject Form E certificate filed by Protective herein standing alone is not evidence of a liability insurance contract because, in addition to other necessary provisions, there is no reference to the amount of coverage extended. Protective relies upon the language in the Form E which provides that there is "... insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law ..." of Oklahoma. This language does not necessarily lead to the conclusion that Protective issued a policy of insurance to Myers limited to $25,000 unless such liability insurance policy or endorsement actually exists. The phrase in the Form E relied upon by Protective should more properly be interpreted to mean that the limits of any such policy were at least the minimum amount of coverage required. The Form E is a convenience to the insurer and the policy itself or endorsement controls the limits of coverage.

Under the facts and circumstances herein, when the Form E is read in conjunction with 47 Okl.St.Ann. §169 and applicable regulations of the Oklahoma Corporation Commission, Protective agreed to provide coverage in the State of Oklahoma to Myers pursuant to the provisions of liability insurance policy GL 3293

which provides $1,000,000 in coverage to Myers.[1]

In construing a contract the plain and unambiguous language thereof is for the court and not the trier of fact. See, Beck v. Traders and General Insurance Co., 182 Okla. 251, 77 P.2d 109 (1938), and Fidelity and Guaranty Fire Corporation v. Tindale, 177 Okla. 556, 61 P.2d 220 (1936).

Another fundamental rule of contract construction is that if the written contract is ambiguous it is to be construed against the party causing the ambiguity. In the case of an ambiguity in an insurance contract, it is to be construed against the insurer whose conduct created the ambiguity. See, New York Life Ins. Co. v. Morgan, 187 Okla. 214, 101 P.2d 826 (1940), and New York Life Ins. Co. v. Sullivan, 191 Okla. 236, 129 P.2d 71 (1942). 15 O.S. §170. Viewing this matter in a light most favorable to Protective from the undisputed facts, Protective has created the ambiguity.

Protective cites and urges in support of its $25,000 coverage obligation the case of Occidental Fire & Casualty Co. v. Keating, 276 F. Supp. 944 (W.D.Okl. 1967). Occidental is distinguishable from the present case because in Occidental a Form E endorsement had been issued and the endorsement clearly limited the insurer's liability coverage to the minimum of $5,000.00 (each person) and

[1]In its agreement with CNAC, supra, Protective required a hold harmless and indemnity agreement from CNAC as well as CNAC's agreement to provide reinsurance treaties satisfactory to Protective as further protection of Protective against loss or expense resulting from CNAC/Protective's insured's operations in the State of Oklahoma.

$10,000 (each accident) limits applicable at that time. Protective also cites Reserve Insurance Company v. Odham, 203 Va. 590, 125 S.E.2d 874 (1962). Reserve is distinguishable likewise because the insurer had issued an endorsement setting forth the terms and conditions of coverage.

The Form E certificate standing alone herein does not constitute a complete contract of insurance as one must refer to the insurance policy or endorsement referred to therein. The certificate standing alone does not state the terms of the insurance coverage such as the risks insured against and the amount of the coverage provided.

Under the facts and circumstances herein, Protective is the insurer under Policy No. GL 3293 which provides liability insurance coverage to Myers in the amount of the limits of $1,000,000 as a result of the accident of June 22, 1987 on U.S. Highway 60 near the City of Nowata, Oklahoma, which is the subject of this action.

The motion for partial summary judgment of Vera L. Tresler, joined in by the claimants herein, is hereby sustained in accordance with the above analysis. The motion for summary judgment of the Defendant Protective Casualty Insurance Company on the same subject is hereby overruled as is Protective's application for interpleader in the amount of $25,000.00.

IT IS SO ORDERED this 19th day of Oct., 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 18 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

In re: CARTWRIGHT, JOHNNY DARRELL, and CARTWRIGHT, ORVELLA ROSE, Debtors.	Bankruptcy Case No. 87-03397-C
Fred W. Woodson, Trustee, Appellant,	
v.	District Court No. 88-C-573-B
Johnny Darrell and Orvella Rose Cartwright, Appellees.	

O R D E R

Pursuant to agreement of counsel and in light of the recent ruling of the United States Supreme Court in Mackey v. Lanier Collections Agency & Service, Inc., 100 L.Ed.2d 836 (1988) when read in conjunction with In re Daniel, 771 F.2d 1352 (9th Cir. 1985) cert. denied, 475 U.S. 1016 (1986), this case is remanded to Hon. Stephen J. Covey, United States Bankruptcy Judge for the Northern District of Oklahoma, for further hearings.

ORDERED this 17th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Clerk to notify all counsel.
cc: Judge Covey

OCT 18 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

In re: NAIMAN, JEFFREY CHRIS d/b/a Star Painting and NAIMAN, DYANE MARIE, Debtors.	Bankruptcy No. 87-03677-C
Fred W. Woodson, Trustee, Appellant, v. JEFFREY CHRIS and DYANE MARIE NAIMAN, Appellees.	District Court Case No. 88-C-572-B

O R D E R

Pursuant to agreement of counsel and in light of the recent ruling of the United States Supreme Court in Mackey v. Lanier Collections Agency & Service, Inc., 100 L.Ed.2d 836 (1988) when read in conjunction with In re Daniel, 771 F.2d 1352 (9th Cir. 1985) cert. denied, 475 U.S. 1016 (1986), this case is remanded to Hon. Stephen J. Covey, United States Bankruptcy Judge for the Northern District of Oklahoma, for further hearings.

ORDERED this 18th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Clerk to Notify all counsel
cc: Judge Covey

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AURORA ANN VEALE,

Plaintiff,

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY, an insurance corporation,

Defendant.

No. 88-C-190-B

FILED

OCT 18 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to stipulation between the parties, this Court hereby dismisses the above-captioned matter with prejudice.

IT IS SO ORDERED this 18 day of October, 1988.

S/ THOMAS R. BRETT

United States District Judge

FILED
OCT 18 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN ALLAN STANFILL,

Plaintiff,

vs.

TULSA COUNTY MEDICAL OFFICES, et al.,

Defendants.

Case No. 88-C-1116-B

O R D E R

This matter comes before the Court upon Defendant Tulsa County's appeal of the Magistrate's Findings and Recommendations. Plaintiff suffers from a shoulder injury requiring medical attention. It has been determined the Plaintiff needs medical surgery to correct the injury; however, the affidavits establish that such surgery is not immediately necessary and can wait until the Plaintiff is released from the Tulsa County Jail in December 1988. The Plaintiff initiated this §1983 action on September 16, 1988, in an attempt to secure his immediate release or to compel the County to provide the required surgery.

The Plaintiff's Complaint identifies the defendant as Tulsa County Medical Offices, although the body of the Complaint identifies John Pilant[1] and the Tulsa County Jail as defendants. Summons were issued to Tulsa County Medical Offices and to John Pilant on September 20, 1988. On September 21, 1988, the

[1]The Complaint identifies the Defendant as John Pliant [sic]. Mr. Pilant is the Medical Administrator of the Tulsa County Jail and is responsible for maintaining the medical files and initially receiving prisoners' grievances regarding medical care.

8

Magistrate's office called the Tulsa County Assistant District Attorney's office and stated that a conference was to be held on September 23, 1988. Assistant District Attorney Dick Blakeley returned the Magistrate's phone call to learn the nature of the suit and whether the Magistrate wanted counsel for Tulsa County present. Mr. Gordon Edwards appeared before the Magistrate and objected to the in personam jurisdiction due to the lack of service upon the Defendants.[2] The Magistrate concluded that service was proper because the Defendant had actual notice of the suit and had voluntarily appeared in court.

The Magistrate's grounds for jurisdiction are the County's actual notice of the suit as evidenced by the telephone conversations between the Magistrate's and District Attorney's offices as well as the District Attorney's appearance at the hearing. Although Fed.R.Civ.P. 4 was designed with a view toward effecting service through a liberal construction, the mere fact that a defendant received actual notice is not sufficient if there has not been compliance with the plain requirements of the rule.

> "Indeed, whenever a defendant comes into court to challenge the service of process he, of necessity, has received notice of suit, but, clearly mere 'notice' is not a sufficient ground upon which a court can sustain the validity of service of process when Congress has established other definitive standards."

Bern v. Farny, 11 F.R.D. 506, 509 (D. N.J. 1951). Congress

[2]At that time, Mr. Edwards was unaware that John Pilant was a defendant and had actually been served. Notwithstanding, the District Attorney continues to object to in personam jurisdiction over Tulsa County for want of service.

established specific standards by which a local government may be served pursuant to Fed.R.Civ.P. 4(d)(6). This section provides that service shall be made as follows:

> "Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant."

Plaintiff has failed to serve the chief executive officer for Tulsa County and must, therefore, must look to state law to see if service has been properly made.

The Oklahoma Pleading Code provides that in a suit against a county, municipal corporation or other governmental organization thereof, service is made by "delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization." 12 O.S. Supp. 1988 §2004(C)(1)(c)(5). Plaintiff's Summons for the Tulsa County Medical Offices does not comply with either the state or federal rules of civil procedure. Therefore, Tulsa County has not been properly served in this action.

At the time of the hearing, John Pilant had been properly served. As a county employee acting within his official capacity, Mr. Pilant was entitled to the Tulsa County District Attorney's assistance. 10 O.S. §215.25. The statute provides that Mr. Pilant

has 15 days in which to make his request for assistance from the County District Attorney. Given the nature of the Complaint, it may have been unreasonable for the Magistrate to have waited the 15 day period to determine whether Mr. Pilant was going to enlist the District Attorney's services. Consequently, the Magistrate put the Plaintiff's interests ahead of the technical requirements of Fed.R.Civ.P. 4 and 19 O.S. §215.25 and called the District Attorney's office.

The Magistrate relaxed these rules because a pro se prisoner filed the complaint in an attempt to secure medical services. At the time the hearing was set, the Magistrate had no knowledge of the Plaintiff's physical condition. The Magistrate would have been exalting form over substance perhaps to the Plaintiff's irreparable detriment had Plaintiff's medical condition been serious and the Magistrate had demanded strict compliance with 12 O.S. §2004 and 19 O.S. §215.25. Although the Plaintiff's condition does not require immediate attention, this Court cannot fault the Magistrate for protecting the Plaintiff's interests and seeking an early determination of the Plaintiff's condition.

Notwithstanding proper service upon John Pilant, the Plaintiff has not made proper service upon the County of Tulsa. The Magistrate concluded that service has been made because the District Attorney had actual notice and appeared at the hearing. While there was service upon Mr. Pilant, there was no summons issued for Tulsa County. Actual notice only applies where there has been substantial compliance with the requirements of Rule 4.

Jackson v. Hayakawa, 682 F.2d 1344 (9th Cir. 1982), Consequently, there can be no actual notice where there has been no attempt to secure service of process. Although the District Attorney made an appearance, it was merely to challenge the Court's in personam jurisdiction over Tulsa County.[3] An appearance to challenge a court's in personam jurisdiction does not confer such jurisdiction upon the appearing party. Oklahoma ex rel Gaines v. Beaver, 166 P.2d 776 (Okla. 1945).

It is therefore **ORDERED, ADJUDGED AND DECREED** that this Court does not have in personam jurisdiction over Tulsa County because there has been no attempted service on the county, the county does not have actual notice of the proceedings, and the District Attorney's appearance was a special appearance limited to the question of jurisdiction. It is **FURTHER ORDERED** that Defendant John Pilant file his Answer within fifteen days of this order.

It is so ORDERED, this 18 day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[3]Although the District Attorney could have appeared as Mr. Pilant's counsel if it had been requested, the District Attorney had no knowledge of the suit or that Mr. Pilant had been served. Therefore, its appearance was limited to objecting to the Court's in personam jurisdiction over Tulsa County.

ejj

OBA # 12280

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELVIN G. NEAL, d/b/a SATELLITE RANCH,

Plaintiff,

vs.

A T & T INFORMATION SYSTEMS, INC.,

Defendant.

No. 88-C-114-B

FILED

OCT 18 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

This cause coming on before me upon application of the parties herein, the Court orders that this matter be dismissed as follows:

1. The Court finds that the parties herein have reached a settlement agreement with regard to the above captioned matter, wherein the Defendant, A T & T, is to pay certain sums of money in exchange for a Dismissal of this action with prejudice as to refiling.

2. The Court herein adopts and ratifies the settlement agreement and orders that this matter be dismissed with prejudice as to refiling.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DANNY L. BARBEE, Plaintiff, v. OTIS R. BOWEN, M.D., Secretary of Health and Human Services, Defendant.	)	87-C-541-B

FILED
OCT 18 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 26, 1988 in which the Magistrate recommended that the decision of the ALJ be reversed and remanded as set forth in the Report and Recommendation .

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate are hereby adopted as set out in the report and recommendation.

Dated this 18 day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

OCT 18 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ONEIDA LAYTON, Plaintiff,	)	
vs.	)	Case No. 87-C-167-E
BURGESS-NORTON MANUFACTURING COMPANY, Defendant.	)	

STIPULATED JUDGMENT OF DISMISSAL

Upon consideration of the Stipulation for Entry of Judgment submitted by all parties to this action, and in view of the parties' fair and reasonable settlement and resolution of all issues herein with the advice and assisting of counsel, it is hereby

ORDERED that this action be dismissed with prejudice, each party to bear its own attorney's fees and costs.

SO ORDERED this 17th day of October, 1988.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

OCT 18 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DON H. NELSON and KAREN J. NELSON, D/B/A KARNEL,

Plaintiffs,

vs.

No. 87-C-89-E

BLACKHAWK RECORDS, INC., a subsidiary of ASPEN RECORDS, INC.,

Defendants.

JOURNAL ENTRY OF JUDGMENT

NOW on this 3rd day of October, 1988, this matter comes before this Court on Plaintiffs' Motion for Default Judgment. Plaintiffs appear by and through their attorney of record, Rhodes, Hieronymus, Jones, Tucker & Gable and Defendant appears not. Being duly advised of the premises and for good cause shown this Court finds:

1. Jurisdiction over the parties to this action is present and proper.

2. Defendants were duly served in accord with the Federal Rules of Civil Procedure on the 10th day of February 1987.

3. Defendants have wholly failed to respond to Plaintiffs complaint.

4. Plaintiffs moved this Court for default judgment on the 28th day of December, 1988; a copy of Plaintiff's Motion was served upon counsel for Defendant.

5. The allegations contained in Plaintiff's Complaint are deemed true.

6. Plaintiffs are entitled to monetary damages in the amount of $40,936.06.

7. Plaintiffs are entitled to return of the master recording which was the subject of this action.

8. Plaintiffs are entitled to have all inventory and unsold LP's, compact disks and cassettes placed in its possession within thirty (30) days of the date of Judgment. For any LP, CD or cassette not returned within thirty (30) days, Plaintiffs will be entitled to payment at the rate of $4.32/unit multiplied by 72.50%.

9. Plaintiffs are relieved of any obligation to further reimburse Defendant for expenses incurred relating to production, manufacture or distribution of the subject units.

10. Plaintiffs are entitled to $1,000.00 as a reasonable expense for the necessity of retaining an audit by reason of Defendant's failure to account.

11. Plaintiffs are entitled to a reasonable attorneys fee to be determined due to Defendant's breach of contract, collection on an open account and in accord with principles of equity.

12. Plaintiffs are entitled to post judgment interest at the rate of 8.04% from the date of this judgment.

13. Defendant is hereby ordered to provide to this Court an accounting for all sales to this date and Defendant is further ordered to provide this Court a continuing accounting every three months from this date.

IT IS SO ORDERED this _____ day of _____, 1988.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

JHL/jch

FILED

OCT 18 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL E. HOPKINS, Plaintiff, vs. CITY OF CLAREMORE, OKLAHOMA, a municipal corporation, MAYOR STANDLEE THOMAS, GRADY DOWELL, and JACK TUGGLE, Defendants.	)	No. 85-C-1111-E

ORDER OF DISMISSAL

NOW on this 17th day of Oct., 1988, upon the written application of the Plaintiff, Paul E. Hopkins, and the Defendants, City of Claremore, Oklahoma, Mayor Standlee Thomas, Grady Dowell, and Jack Tuggle, for a Dismissal With Prejudice of the Complaint of Hopkins v. Claremore, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Paul E. Hopkins, against the Defendants, City of Claremore, Oklahoma, Mayor Standlee Thomas, Grady Dowell, and Jack Tuggle, be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

EARL W. WOLFE

Attorney for Plaintiff

JOHN HOWARD LIEBER

Attorney for Defendant

FILED
OCT 18 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CLIFFORD THOMAS,

Plaintiff,

v.

THE CITY OF DEWEY, OKLAHOMA, GARY TAYLOR, JESS HOUSE, RAYMOND SPENCER and LESLIE PURDUM,

Defendants.

No. 87-C-909-B

ORDER SUSTAINING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court upon Defendants' Motion for Summary Judgment. The Plaintiff, Clifford Thomas, instituted this suit to redress alleged constitutional and statutory violations arising from his termination as City Superintendent of Public Works for the City of Dewey, Oklahoma. After reviewing the uncontroverted facts and applicable law, the Motion for Summary Judgment is sustained with regard to all defendants.

The Plaintiff was employed for an indefinite period as the city superintendent beginning August 1, 1984. On May 6, 1987, newly appointed city manager Les Purdum delivered a letter to the Plaintiff relieving him of his duties "for the good of the service, economic conditions and welfare of the City." The City of Dewey has a charter form of government and vests authority in the city manager to make all necessary personnel decisions, including promotions and terminations, without interference from the city council. The Plaintiff alleges members of the city council conspired with the acting city manager to terminate Thomas'

employment and deprive him of his constitutionally protected property rights. Additionally, the Plaintiff alleges the City of Dewey should be liable for violating his civil rights protected under 42 U.S.C. §1983.[1]

It is well recognized that a city may be sued for civil rights violations pursuant to 42 U.S.C. §1983; however, in order to state a cause of action against a municipality, a plaintiff must allege the municipality officially adopted or promulgated some custom or policy which had the effect of violating that person's civil rights. Monell v. Department of Social Services of New York, 436 U.S. 658, 690 (1978). Nowhere does the Plaintiff's Amended Complaint allege the City officially adopted a policy or promulgated a custom which may be fairly attributed as official policy that violated his civil rights.

To survive a motion for summary judgment, the Plaintiff "must establish that there is a genuine issue of material fact as to whether" Defendants' actions constituted an official policy. Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushuta v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party

[1]The Defendants' Motion for Summary Judgment addressed the §1983 issue based upon the original Complaint. After the Motion was filed, the Plaintiff filed an Amended Complaint which failed to state a §1983 claim. Notwithstanding this omission, both parties continue to address the City's potential liability. Therefor, this Order addresses the §1983 claim as well.

who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986). Therefor, the Plaintiff has the burden of coming forward with some evidence, whether by affidavit or by deposition, to establish the existence of an official policy or custom.

Plaintiff offers four affidavits to establish the existence of an official policy or custom.[2] Three affidavits are identical and state:

> 1. On July 20, 1987, I witnessed a conference between Jim Fowler and Les Purdum wherein Les Purdum stated he could not find any reason to fire Cliff Thomas.
>
> 2. On May 4, 1987, Gary Taylor told Les Purdum to put Jim Fowler to work as soon as they let Cliff Thomas go.
>
> 3. On August 10, 1987, Jim Fowler stated that he was at a meeting at the home of Les Purdum. At that meeting those present were Gary Taylor, Jess House, Lester Rogers, Jim Fowler, Raymond Spencer and someone else whose name he could not remember. Jess House told Les Purdum to fire Cliff Thomas so Jim Fowler could go to work and then they could work on Leonard Ames.
>
> 4. Jim Fowler was in the City Barn on May 5, 1987, asking about Grader Blades and the next day he went to work for the City.

The remaining affidavit states:

> 1. On May 1, 1987, I was told that on May 5, 1987, the new Dewey City Council was going to

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[2]Plaintiff submits the affidavits of Gene Medlin, Michael E. Owens, Charles Beare, and Herb Hudson to prove the "manner in which he was discharged amounted to official policy." Plaintiff's Response at 3-4.

fire Clifford Thomas and Leonard Ames.

2. I was further told that Lester Rogers was going to be the new Dewey Police Chief.

3. I was further informed that this had been decided at a meeting held at Les Purdum's house prior to May 1, 1987.

4. Lester Rogers was the person who made these statements to me at Hooter's Smart Shop and further stated that he was in attendance at the meeting at Les Purdum's house.

These affidavits are merely statements of non-parties recounting conversations between other persons. At best, the affidavits may be considered rank hearsay and, even if admissible, do not provide any facts tending to prove the existence of an official policy actionable under §1983. In their Motion for Summary Judgment, the Defendants submitted affidavits from the mayor, the acting city manager, and the two members of the city council who are defendants herein. The mayor's and city council members' affidavits state they voted to appoint Les Purdum as the acting city manager, but there was no understanding or instructions to fire the Plaintiff. Additionally, they did not have the authority to make personnel decisions and did not encourage Les Purdum to terminate Plaintiff's employment. Les Purdum's affidavit states that he had the authority to terminate the Plaintiff's employment and the bases for that action were "for the good of the service, economic conditions and welfare of the City." Furthermore, Purdum's affidavit states that he did not seek the advice of the mayor or the city council and did not participate in any conspiracy. These affidavits do not deny the existence of any meeting which may have occurred prior to

Les Purdum assuming the role of acting city manager; however, the affidavits do deny what may have occurred at that meeting. Plaintiff's failure to come forward with any admissible evidence tending to prove the existence of any official action by the city council is fatal to his §1983 claim. Therefor, the Motion for Summary Judgment with regard to the civil rights claim is sustained.

The Plaintiff also asserts that his property interests were unconstitutionally violated when he was fired without a pretermination hearing. To be entitled to a pretermination hearing and to have a claim for a violation of a property interest, the employee must have more than a unilateral expectation of continued employment. The employee must have a legitimate claim of entitlement to continued employment. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972). The Roth decision concluded that these interests should be determined by state law.

> "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."

Id. To support his claim that he possessed a valid property interest, the Plaintiff alleges the Dewey personnel manual vested him with continued employment which could be terminated only for cause. The manual provides that a person shall be terminated if the following occurs:

a. Voluntary quitting.

b. Discharge for cause.
c. Failure to report to work after a lay-off.
d. Absence from work without leave.

Plaintiff construes section (b) to permit discharge only for cause and argues the personnel manual supersedes the City Charter and City Code, thereby giving the Plaintiff a protected property interest which may be terminated only after a pretermination hearing. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

Plaintiff's reliance upon Loudermill is misplaced because the statute in that case specifically provided that a public employee was a classified employee and could be terminated only for cause. No such statute or language exists in state or local laws in this instance. Plaintiff alleges the personnel manual created such a property right by construing "discharge for cause" to mean "discharge only for cause". The personnel manual, however, was an expression of general personnel policies and does not have the force and effect of law. The failure to follow any of the procedures necessary to formally enact a city ordinance relegates the manual to a mere resolution. Defendants' Affidavit of City Clerk Judy McMurtrey. Furthermore, even if the manual had been adopted as an ordinance by reference, it would have been an improper amendment to the City Charter because it would have substantially limited the city manager's authority to make personnel decisions. The Dewey City Charter, section 22(1) provides that the city manager shall have the authority to:

"1. Appoint, and when necessary for the good of the service, suspend, demote or remove all

> directors, or heads, of administrative departments and all other administrative officers and employees of the city except as he or the council by ordinance or this charter may authorize the head of a department, an officer or an agency to appoint and suspend, demote or remove subordinates in such department, office or agency, subject to such merit system regulations as the council may ordain."

The City Code underscores this authority in sections 2-301 and 2-302 by vesting the city manager with the authority to remove employees "without cause for the good of the service."

Plaintiff argues, however, that all terminations made for the good of the service must be made subject to the merit system. Instead of making decisions "for the good of the service," the city manager could terminate employees only for cause. This analysis is unfounded because a plain reading of §22(1) reveals that the city manager retains the authority to fire any employee for the good of the service. If the city manager or the city council delegates to an administrative head the power to demote and terminate subordinates, then that delegated authority must be exercised consistent with the merit system regulations. The city manager's authority remains unimpeded by the merit system. If the city council wanted to limit the city manager's authority, the proper means would have been to amend the charter as provided in the Dewey City Charter §51. Consequently, the city manager retains the discretion to remove an employee for the good of the service.

The Supreme Court of Oklahoma in Hall v. O'Keefe, 617 P.2d 196 (Okla. 1980), construed the term "for the good of the service" as

it appears in Title 11 O.S. §§10-113 and 10-120.[3] The Supreme Court concluded:

> "Certainly the legislature could not have then meant a limitation so vague as 'for the good of the service' to confer upon a city employee a property interest requiring due process protection unavailable to him under more explicit guarantees."

Id. at 200. The Plaintiff could have no legitimate expectation of continued employment where the City Charter and City Code allow termination for the good of the service. Accepting the Plaintiff's construction that "termination for cause" superseded the Charter and City Code would substantially alter the authority the city Charter vests in the city manager to terminate an employee for the good of the service. Relying upon state and city law, it is clear that a property interest was not to be conferred by the terms "for the good of the service."

Notwithstanding the personnel manual is not considered to have the force and effect of law, Plaintiff urges that an employment manual can become part of the employment contract. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), recognized that an employee manual may form an employment contract if the manual was part of the bargain inducing employment or if the employee suffered some form of detrimental reliance. Id. at 554-55, n.20. Relying upon Hinson, Plaintiff alleges he had a right to permanent employment

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[3]These sections are substantially identical to the Charter provisions in the Dewey city charter. 11 O.S. §10-113 is identical to Dewey City Charter section 22 (Powers and Duties of the City Manager) and 11 O.S. §10-120 is substantively the same as Dewey Charter section 40 (Merit system).

which could be terminated only for cause. The Hinson Court rejected this argument and concluded the 37 grounds for termination in that employee handbook were not exhaustive, but merely illustrative.[4] 742 P.2d at 556-57. Absent special circumstances, employment for an indefinite period is not to be considered permanent employment, but employment terminable at-will. Singh v. Cities Service Oil Co., 554 P.2d 1367 (Okla. 1976). The Plaintiff has neither plead nor offered evidence showing any reliance or special circumstances giving rise to an enforceable contract based upon the personnel manual.[5] In fact, the personnel manual was adopted several months after the Plaintiff accepted his employment. The Plaintiff cannot be considered to have had a vested property interest of permanent employment with the City of Dewey because the City Charter and the City Code clearly provided for termination for the good of the service when the Plaintiff accepted his employment. Likewise, the personnel manual could not have been the basis for

[4]It is particularly noteworthy the Dewey personnel manual never defines what "termination for cause" entails. This is but more indicia the City Council did not intend the manual to have the widespread effect the Plaintiff urges. Even if the Plaintiff's position were adopted, the City Manager would have complete discretion to determine the grounds for termination given the lack of what constitutes "cause".

[5]Examples of special circumstances or detrimental reliance are (a) job training where the costs are borne by the employee; (b) detrimental reliance followed by turning down offers of other employment; (c) selling a business by people who then become employees of the buyer; (d) moving after being lured by an indication of lengthy employment; (e) implied or express promises about job security made during recruiting; and (f) statements about good working conditions, salary increases, promotions or special compensation programs. Hinson v. Cameron, 742 P.2d 549, 555 n.20 (citations omitted).

any bargained for benefits if it was not in existence when the Plaintiff began his employment. Consequently, there is no property interest and a pretermination hearing is unnecessary. Bishop v. Wood, 426 U.S. 341 (1976); Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

It is therefor **ORDERED, ADJUDGED AND DECREED** that Summary Judgment be entered in favor of the City of Dewey, Oklahoma, because no policy has been adopted and no custom amounting to policy has been promulgated. It is **FURTHER ORDERED** that, as a matter of law, the Plaintiff possessed no vested property rights and the Defendants' Motion for Summary Judgment is sustained with regard to the City of Dewey and to each defendant. Consistent with the Court's conclusions announced at the Hearing on June 29, 1988, the Defendants' Motion for Summary Judgment with regard to alleged violations of the Plaintiff's liberty interests is also sustained. Bailey v. Kirk, 777 F.2d 567, 572 (10th Cir. 1985).

Dated this 18 day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TWYLAH SUE HOOKER, Plaintiff, v. CONTINENTAL LIFE INSURANCE COMPANY, Defendant.	)	No. 88-C-507-B

FILED
OCT 17 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Plaintiff Twylah Sue Hooker's appeal of the Protective Order entered by United States Magistrate John Leo Wagner on August 1, 1988. The Court has reviewed the Order, the briefs and the entire file and finds the Magistrate's ruling was entirely correct and the Order is adopted by this Court.

DATED this 17th day of October, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TWYLAH SUE HOOKER, Plaintiff,	)	
v.	)	88-C-507-B
CONTINENTAL LIFE INSURANCE COMPANY, Defendant.	)	

FILED
AUG -1 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DISCOVERY AND PROTECTIVE ORDER

Now before the Magistrate is Elsie Draper's and Gable & Gotwals' Motion for Protective Order and for Award of Expenses (Docket #1)[1], relating to Case No. 88-171-C in the Eastern District of Oklahoma. A hearing was held on July 26, 1988 and oral arguments were heard. Having reviewed the arguments, pleadings, and applicable law, the Magistrate finds as follows.

Plaintiff filed this action alleging the bad faith breach of an insurance policy and intentional infliction of emotional distress resulting from the breach. On May 25, 1988 plaintiff served two notices to take deposition upon counsel for defendant, Elsie Draper, and a corporate representative of the law firm of Gable & Gotwals. In addition, subpoenas were served upon the two to appear on 6/3/88 for depositions and to produce for examination the following:

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[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

1. Copies of any and all time records reflecting communications between any member of the deponent law firm and the Defendant;

2. Copies of any and all memoranda of fact or law pertaining to the claims of Plaintiff asserted against Defendant;

3. Copies of any and all communications of a written nature pertaining to the claims of Plaintiff against Defendant or deponent's recommendations to the Defendant as to how those claims should be handled;

4. All memoranda of telephone conversations or other communications of any kind between any representative of deponent and the Defendant;

5. Any legal files of the deponent pertaining to the claims of Plaintiff asserted against Defendant or the manner in which Defendant should respond to the claims of Plaintiff asserted;

6. Any and all documents, tape recordings, or any materials of any kind pertaining to the claims of Plaintiff against Defendant or the manner in which Defendant should handle and respond to the claims of Plaintiff asserted.

Defendant argues that the deposition notices and subpoenas should be quashed by entry of a protective order by this court pursuant to Rule 26(c) of the Fed.R.Civ.P., because the information sought to be elicited in the depositions and documents is completely protected from disclosure by the attorney-client and work product privileges. Plaintiff alleges that defendant's reliance on its attorneys' actions as a defense to plaintiff's bad faith claim and act of pleading in its answer those acts of counsel puts counsels' communications and documents at issue so that they are discoverable. Plaintiff

relies on the ruling in Ellison v. Gray, 702 P.2d 360 (Okla. 1985) to support her allegations.

The attorney-client privilege permanently protects from disclosure confidential communications between an attorney and his client when the purpose is the giving or receiving of legal advice. The client claims the privilege. He must show that he is or sought to become a client and that the person to whom the communication was made is a member of the bar of a court or his subordinate. Such person must act as a lawyer in connection with the communication. The communication must relate to a fact of which the attorney was informed by his client without the presence of strangers. The primary purpose of the communication must be to secure a legal opinion or to obtain assistance in some legal proceeding and not for purposes of committing a crime or tort. It must further be shown that the privilege has been claimed and not waived by the client. Coastal Corp. v. Duncan, 86 F.R.D. 514, 520 (D.C. Dela. 1980); United States v. United Shoe Machinery Corp., 89 F.Supp. 357, 358-59 (D.C.Mass. 1950).

The "work product rule" dealt with in Fed.R.Civ.P. 26(b)(3)[2]

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[2] Fed.R.Civ.P. 26(b)(3) reads, in pertinent part, as follows:

> Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of

is claimed by the attorney and protects his mental impressions consisting of conclusions, legal theories, and opinions, evaluations of strength and weakness, and inferences drawn from witness interviews during the course of a particular client representation. These impressions, when reduced to writing, make up the attorney's "work product".

The rationale for the work product rule is "the prevention of unnecessary interference with the work of an attorney". Natta v. Hogan, 392 F.2d 386, 393 (10th Cir. 1968). The rule protects the freedom to express and record the thought process of attorneys and thus the adversary system of justice. The courts have recognized that there occasionally are "rare situations ... where weighty considerations of public policy and a proper administration of justice would militate against the non-discovery of an attorney's mental impressions. Absent such a compelling showing, the attorney's opinion work product should remain immune from discovery." In re Murphy, 560 F.2d 326, 336 (8th Cir. 1977).

The Magistrate finds that the ruling in Ellison v. Gray, supra, is inapplicable here. In that case, defendants raised the

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> his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation...
>
> * * *

defense of good faith reliance on the advice of counsel in bringing a federal lawsuit which resulted in a suit for malicious prosecution being filed against them. Good faith reliance was raised as a defense to the underlying cause of action, and the court allowed discovery of the work product and legal theories of defendants' attorneys because these were at issue.

Defendant's answer (#2 to Appendix to Plaintiff's Response) does not plead the conduct of its attorneys as an affirmative defense and merely confesses the breach of contract cause of action. Defendant's answer does not present reliance on advice of counsel as a defense to the remaining causes of action for bad faith and intentional infliction of emotional distress.

Any actions by the defendant's attorneys occurred after suit was filed, when defendant admitted liability under the insurance policy through its attorneys and tendered a check to plaintiff for the policy amount plus interest, which plaintiff refused to accept. Denial of plaintiffs' claim occurred prior to the filing of suit. Plaintiffs' causes of action for bad faith breach of the insurance contract and for intentional infliction of emotional distress relate directly to the defendant insurance company's actions in investigating and denying plaintiff's claim. No law firm was involved when these claims arose. Therefore the subsequent actions or advice of attorneys are totally irrelevant to plaintiffs' remaining causes of action and not discoverable under Fed.R.Civ.P. 26(b)(1), which states that parties may obtain

discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action..." (emphasis added).

Therefore the Magistrate finds that defendant's Motion for Protective Order should be and hereby is granted and the deposition subpoenas issued on May 25, 1988 should be and hereby are quashed. Plaintiff is prohibited from proceeding with any depositions or requests for record production by Elsie Draper or the law firm of Gable & Gotwals. Plaintiff is prohibited from access to the following information in the attorneys' files which is irrelevant to this action:

1. Copies of any and all time records reflecting communications between any member of the deponent law firm and the Defendant;

2. Copies of any and all memoranda of fact or law pertaining to the claims of Plaintiff asserted against Defendant;

3. Copies of any and all communications of a written nature pertaining to the claims of Plaintiff against Defendant or deponent's recommendations to the Defendant as to how those claims should be handled;

4. All memoranda of telephone conversations or other communications of any kind between any representative of deponent and the Defendant;

5. Any legal files of the deponent pertaining to the claims of Plaintiff asserted against Defendant or the manner in which Defendant should respond to the claims of Plaintiff asserted;

6. Any and all documents, tape recordings, or any materials of any kind pertaining to the claims of Plaintiff against Defendant or the manner in which Defendant should handle and respond to the claims of Plaintiff asserted.

The Magistrate finds that the circumstances of this action make an award of attorney's fees unjust so each side should bear its own costs and attorney fees incurred in obtaining and defending against this protective order.

Dated this 1st day of ~~July~~ August, 1988.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE

ejj

OBA # 5026

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Corporation, Plaintiff, vs. CHARLES GRAHAM and BARRI GRAHAM, Individually, and as Parents and Next Friends of ROBERT CHARLES SHANE GRAHAM, a Minor Child, et al., Defendants.	No. 88-C-600-B

FILED

OCT 17 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT ENJOINING THE DEFENDANTS FROM PURSUING ANY FURTHER CLAIMS UNDER A CERTAIN LIABILITY POLICY ISSUED BY STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ORDER OF DISMISSAL OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND ORDER DIRECTING DISBURSEMENT OF INTERPLED FUNDS

On this 17 day of Oct., 1988, the joint application of the parties for an Order enjoining the Defendants from making further claims against State Farm Mutual Automobile Insurance Company under a certain liability policy issued to Freda Poe, Policy No. 2253063-36A, Order dismissing State Farm Mutual Automobile Insurance Company, and Order Directing Dispersal of the Interpled Funds came on before the Court for hearing. The Court, upon reviewing the joint application of the parties and the Court file, finds as follows:

I.

That an accident occurred on April 1, 1988, at the intersection of U.S. Highway 64 and Garnett Road between a vehicle operated by William Robert Poe and a vehicle operated by Birt Cedent Gray. The initial impact between these two vehicles caused the Gray vehicle to proceed to impact with the vehicle operated by Wayne Kenneth Ories. That Elva Gray was a passenger in the vehicle operated by Bert Cedent Gray. Joann Tracy was an occupant and passenger of the vehicle operated by Wayne Kenneth Ories.

II.

Birt Cedent Gray and Elva Gray died as a result of the accident. That a probate action has been filed in Tulsa County District Court, Case No. P-88-522. Charles D. Graham has been appointed as the Administrator of their Estates. That the Estates are making claim against William Robert Poe for the wrongful death of Birt Gray and Elva Gray.

III.

Wayne Kenneth Ories is claiming damages against William Robert Poe as a result of injuries received in said accident.

IV.

Joann Tracy is making a claim against William Robert Poe for injuries received in said accident.

V.

Robert Charles Shane Graham, a minor child, was a passenger in the vehicle operated by Birt Cedent Gray. That Robert Charles Shane Graham, through his parents, Charles Graham, Jr. and Barri Graham, is making a claim against William Robert Poe. Charles Graham, Jr. and Barri Graham, Individually, are also making a claim against William Robert Poe for medical expense and loss of services.

VI.

That State Farm Mutual Automobile Insurance Company of Bloomington, Illinois, issued a policy of automobile liability insurance to Freda Poe, Policy No. 2253-063-36A. That said policy of insurance covered the 1982 Chevrolet pickup truck operated by William Robert Poe at the time of the accident on April 1, 1988. Said policy of insurance provided $25,000.00 per person and $50,000.00 per accident liability coverage. State Farm Mutual Automobile Insurance Company has interpled said funds in this action due to the multiple claimants and the amounts claimed.

VII.

The parties have agreed and stipulated that Charles Graham, Jr. and Barri Graham could present their testimony on behalf of Robert Charles Shane Graham, their minor child, by Affidavit.

VIII.

The parties have further agreed that the interpled funds of $50,000.00 shall be divided as follows:

Charles Graham, Jr. and Barri Graham, Individually, and as Parents and Next Friends of Robert Charles Shane Graham, a Minor	$10,000.00
Charles D. Graham, as the Administrator of the Estate of Birt Cedent Gray	$10,000.00
Charles D. Graham, as the Administrator of the Estate of Elva Gray	$10,000.00
William Ories	$10,000.00
Joann Tracy	$10,000.00

IX.

That State Farm, by its payment of the $50,000.00, has exhausted its liability coverage under Policy No. 2253-063-36A, and each of the Defendants herein should be enjoined from making any further claim against State Farm Mutual Automobile Insurance Company for the liability limits under said Policy.

X.

That Charles Graham, Jr., father of Robert Charles Shane Graham, has a personal uninsured motorist policy with State Farm Mutual Automobile Insurance Company under which Robert Charles Shane Graham has a claim. That the payment of the liability limits under Policy No. 225-3063-36A issued to Freda Poe in no way prejudices the right of Robert Charles Shane Graham, Charles Graham, Jr. and Barri Graham to pursue any claim against said uninsured motorist coverage issued to Charles Graham, Jr. Furthermore, the Stipulation of Dismissal Without Prejudice filed herein pursuant to Civil Rule of Procedure 41 shall not prejudice the

rights of Barri Graham, Charles Graham, Jr. and Robert Charles Shane Graham to make any claim against State Farm Mutual Automobile Insurance Company as a result of this accident under the uninsured motorist policy purchased by Charles Graham, Jr.

XI.

That William Ories had a policy of uninsured motorist insurance with State Farm Mutual Automobile Insurance Company on the vehicle he was operating at the time of the accident. That the payment of the liability funds in this interpleader action does not prejudice William Ories' rights regarding said uninsured motorist coverage and any claims that he may have regarding same.

XII.

That Joann Tracy as a passenger in the Ories' vehicle, insured by State Farm Mutual Automobile Insurance Company at the time of the accident, has a claim against said uninsured motorist coverage. That the payment of the liability funds under this policy issued to Freda Poe does not prejudice in any way the rights of Joann Tracy to make any uninsured motorist claim she may have against State Farm Mutual Automobile Insurance Company under the policy issued to William Ories.

XIII.

That the payment to Charles Graham, Jr. and Barri Graham, Individually, and as Parents and Next Friends of Robert Charles Shane Graham, a Minor, will be apportioned as follows:

$1,000.00 to Charles Graham, Jr. and Barri Graham for medical expenses to cover medical bills that are unpaid or to be incurred in the near future;

$3,333.00 to Gary Eaton for attorney fee which amount is approved by the Court;

$5,667.00 to be deposited at Fourth National Bank & Trust Company, and held in Trust for the minor, Robert Charles Shane Graham, pursuant to 12 O.S. 83.

XIV.

The settlement wherein Robert Charles Shane Graham, Barri Graham and Charles Graham, Jr. are to receive $10,000.00 of the liability policy funds is specifically approved by the Court as in the best interests of the minor child, Robert Charles Shane Graham, and said judgment is approved. The parents and guardian understand that this is a final judgment and that they and their minor child, Robert Charles Shane Graham, are prohibited from making any further claim against the liability policy issued to Freda Poe by State Farm Mutual Automobile Insurance Company

XV.

That upon filing of this judgment, State Farm Mutual Automobile Insurance Company shall deliver to the appropriate Defendants the following drafts:

Draft in the amount of $10,000.00 payable to Charles Graham, Jr., and Barri Graham, Individually, and as Parents of Robert Charles Shane Graham, and Gary Eaton, Attorney

Draft in the amount of $10,000.00 payable to Charles Graham, Sr., as Administrator of the Estate of Birt Cedent Gray, and James Frasier, Attorney

Draft in the amount of $10,000.00 payable to Charles Graham, Sr., as Administrator of the Estate of Elva Gray, and James Frasier, Attorney

Draft in the amount of $10,000.00 payable to William Ories, and Max Watkins, Attorney

Draft in the amount of $10,000.00 payable to Joann Tracy, and Max Watkins, Attorney

XVI.

By the filing of this Judgment and payment of the drafts, State Farm Mutual Automobile Insurance Company shall be dismissed from this action and the action dismissed. Each of the Defendants shall be permanently enjoined from making any further claim against State Farm Mutual Automobile Insurance Company for funds due under Policy No. 225-3063-36A issued to Freda Poe for any damages caused by the automobile accident of April 1, 1988.

XVII.

That Charles Graham, Jr. and Barri Graham are the parents of Robert Charles Shane Graham, a minor, and should be and are appointed as his Guardian Ad Litem for this suit. Robert Charles Shane Graham's birthdate is April 23, 1984.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that State Farm Mutual Automobile Insurance Company is hereby allowed to interplead its policy limits of $50,000.00 under Policy No. 2253-063-36A, which policy was issued to Freda Poe and applied to the accident of April 1, 1988, wherein William Robert Poe was driving the insured vehicle under said policy.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that after the payment of the $50,000.00 funds, all of the Defendants herein are permanently enjoined from making any further claim against State Farm Mutual Automobile Insurance Company for funds due under said liability policy of insurance for the accident of April 1, 1988.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the $50,000.00 of interpled funds shall be disbursed by State Farm Mutual Automobile Insurance Company as follows:

$10,000.00 to Charles D. Graham, as Administrator of the Estate of Birt Cedent Gray, and James Frasier, Attorney

$10,000.00 to Charles D. Graham, as Administrator of the Estate of Elva Gray, and James Frasier, Attorney

$10,000.00 to William Ories, and Max Watkins, Attorney

$10,000.00 to Joann Tracy, and Max Watkins, Attorney

$10,000.00 to Charles Graham, Jr., and Barri Graham, Individually, and as Parents and Next Friends of Robert Charles Shane Graham, a Minor

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the $10,000.00 disbursed to Charles Graham, Jr. and Barri Graham, Individually, and as Parents and Next Friends of Robert Charles Shane Graham, shall be distributed between them as follows:

$1,000.00 to Charles Graham, Jr., and Barri Graham, for medical expense incurred, but unpaid, or medical bills to be incurred in the near future

$3,333.00 to Gary Eaton, as attorney fee, which amount is approved by the Court

$5,667.00 to be held in a Joint Trust by Charles Graham, Jr. and Barri Graham, for the benefit of Robert Charles Shane Graham at First National Bank & Trust Company Bank, pursuant to 12 O.S. 83.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the $5,667.00 shall be held in a joint trust account by Barri Graham and Charles Graham, Jr. and shall not be paid out without further Order of the Court or until Robert Charles Shane Graham reaches his majority.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the payment of the liability funds and dismissal of this interpleader action shall not prejudice the rights of William Ories, Joann Tracy, Robert Charles Shane Graham, Charles Graham, Jr. or Barri Graham, to make claims under their own personal uninsured motorist coverage on other policies other than the policy issued to Freda Poe, even though those policies are with State Farm Mutual Automobile Insurance Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the case is dismissed with prejudice for all purposes except for proceedings to enforce this Order.

Dated this 17 day of October, 1988.

JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

DENNIS KING - OBA # 5026
Attorney for Plaintiff,
State Farm Mutual Automobile Ins. Co.

GARY EATON - OBA # 2598
Attorney for Defendants,
Charles Graham, Jr. and Barri Graham, Individually, and as Parents and Next Friends of Robert Charles Shane Graham, a Minor

MAX D. WATKINS - OBA # 9384
Attorney for Defendants,
William Ories and Joann Tracy

JAMES E. FRASIER - OBA #3108
Attorney for Defendant,
Charles D. Graham, Administrator of the Estate of Birt Cedent Gray and Elva Gray

FILED

OCT 17 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NAIMAN, JEFFREY CHRIS dba Star Painting NAIMAN, DYANE MARIE	)	
Debtors,	)	Bankruptcy Case # 87-03677-C
FRED W. WOODSON, Trustee	)	District Court Case # 88-C-572-B
Appellant,	)	
vs.	)	
JEFFREY CHRIS AND DYANE MARIE NAIMAN	)	
Appellees.	)	

ORDER GRANTING DISMISSAL WITH PREJUDICE

Upon stipulation of the parties and for good cause shown, Appellants' cause of action is hereby dismissed with prejudice to the refiling of such actions.

IT IS SO ORDERED this 17th day of October, 1988.

The Honorable Thomas R. Brett
JUDGE OF THE DISTRICT COURT

JHL/jch

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FREDERIC DONOVAN LIEBRAND, Plaintiff, vs . THE CITY OF BARTLESVILLE, OKLAHOMA, an Oklahoma municipal corporation; OFFICER MARK WHATLEY, Individually; and SERGEANT DENNIS TAYLOR, Individually, Defendants.	)	No. 87-C-1076-B

OCT 17 1988
Jack C. [illegible]
U. S. DISTRICT [illegible]

ORDER OF DISMISSAL

NOW on this 17 day of October, 1988, upon the written application of the Plaintiff, Frederic Donovan Liebrand, and the Defendants, The City of Bartlesville, Oklahoma, an Oklahoma Municipal corporation, Officer Mark Whatley, Individually, and Sergeant Dennis Taylor, Individually, for a Dismissal With Prejudice of the Complaint of Liebrand v. Bartlesville, and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Frederic Donovan Liebrand, against the Defendants, Frederic Donovan Liebrand, and the Defendants, The City of Bartlesville, Oklahoma, an Oklahoma Municipal corporation, Officer Mark Whatley, Individually, and Sergeant Dennis Taylor, Individually, be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT
JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

WILLIAM LASORSA

Attorney for Plaintiff

JOHN HOWARD LIEBER

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT W. PAYNE,

Plaintiff,

vs.

BENTLEY TRADING COMPANY,

Defendant.

No. 88-C-294B

FILED

OCT 17 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 17 day of October, 1988, the Court has for its consideration the Stipulation For Dismissal With Prejudice jointly filed in the above styled and numbered cause by Plaintiff and Defendant. Based upon the representations and requests of the parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiff's Complaint and claims for relief against Defendants be and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees.

JUDGE OF THE DISTRICT COURT

APPROVED:

DAVID L. SOBEL, OBA #8444
2021 South Lewis, Suite 675
Tulsa, Oklahoma 74104
(918) 745-0607

GARY BRASEL, OBA #1080
1700 Southwest Blvd. Suite 100
Tulsa, Oklahoma 74107
(918) 584-4742

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT M. HANNIGAN; LUZ MARIA HANNIGAN; CHARLES E. SAMS; DEBORAH L. SAMS; COUNTY TREASURER, Creek County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Creek County, Oklahoma,

Defendants.

FILED

OCT 17 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-798-B

O R D E R

NOW, on this 17 day of October, 1988, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered herein on April 22, 1988. The Court finds said Motion is well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered herein on April 22, 1988, be and the same is hereby amended by deleting the words, "with appraisement," appearing in the third paragraph on page 5 of the Judgment and inserting in lieu thereof the words, "without appraisement."

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

OCT 17 1998 A

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICY OF OKLAHOMA

entered

In Re:	M.D.L. 153 ✓
HOME-STAKE PRODUCTION COMPANY SECURITIES LITIGATION	ALL CASES

ORDER

The Court having read and considered the motion of Defendants Wynema Anna Cross, Executrix of the Estate of Norman C. Cross, Jr., and Cross and Company for mistrial and discharge of the jury, hereby finds and orders that Defendants motion be denied.

Manuel L. Real, Chief Judge
United States District Court
Central District of California

7915

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 17 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LOUIS EVERT CHALLIS and ALVIS GUSTINE CHALLIS, Plaintiffs,	)	
vs.	)	No. 88-C-291-C
FIBREBOARD CORPORATION, et al., Defendants.	)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby dismiss the above-entitled cause without prejudice as to the refiling of the action for the reason that both Plaintiffs are now deceased and that it is in the best interests of judicial economy that this action be terminated.

UNGERMAN & IOLA

By _____
Mark H. Iola
Post Office Box 701917
Tulsa, Oklahoma 74170-1917
918/495-0550

ATTORNEYS FOR PLAINTIFFS

DURBIN, LARIMORE & BIALICK

By _____
Stephen S. Boaz
920 North Harvey
Oklahoma City, Oklahoma 73102
405/235-9584

ATTORNEYS FOR GARLOCK, INC.

PRAY, WALKER, JACKMAN, WILLIAMSON & MARLAR

By _____
Barbara Gasparetti
900 ONEOK Plaza
Tulsa, Oklahoma 74103
918/584-4136

ATTORNEYS FOR WELLINGTON DEFENDANTS

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE

By _____
Joan Godlove
3800 First National Tower
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918/582-8100

ATTORNEYS FOR CELOTEX, INC.

SMITH, RALSTON, RUSSELL & WRIGHT

By _____
Martha Phillips
302 North Market, Suite 501
Dallas, Texas 75202
214/263-5622

ATTORNEYS FOR EAGLE-PICHER INDUSTRIES, INC.

HUCKABY, FLEMING, FRAILEY, CHAFFIN & DARRAH

By _____
Scott M. Rhodes
Post Office Box 60130
Oklahoma City, Oklahoma 73146
405/235-6648

ATTORNEYS FOR OWENS-CORNING FIBERGLAS CORP.

Entered

FILED

OCT 17 1988 A

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

In Re:	M.D.L. 153 ✓
HOME-STAKE PRODUCTION COMPANY SECURITIES LITIGATION	ALL CASES

ORDER

The Court having received the jury's verdicts and answers to special interrogatories on statutes of limitations and equitable estoppel on September 2, 1988, and having reviewed and considered the parties' previously filed briefs and arguments with respect to the statute of limitations issues under (i) section 11 of the Securities Act of 1933 (the "1933 Act"), (ii) section 10(b) of the Securities Exchange Act of 1934 (the "1934 Act"), and Rule 10b-5 thereunder, and (iii) common law negligence, hereby finds and orders:

(1) Based on the jury's findings that the class representatives for the 1964 through 1972 classes, both individually and in their representative capacity, did not discover nor should have discovered by the exercise of reasonable diligence until September, 1973, that defendants Robert S. Trippet, Frank E. Sims, Elmer M. Kunkel, Cross & Company, Norman C. Cross, Jr. and Kothe & Eagleton, Inc. violated or aided and abetted a violation of Rule 10b-5, the claims asserted under section 10(b) of the 1934 Act and Rule 10b-5 thereunder against those defendants by the nine class representatives, both on behalf of themselves and the classes they

3607

represent, are not time-barred by the applicable statutes of limitation.

(2) Based on the jury's findings that the class representatives for the 1964 through 1972 classes, both individually and in their representative capacity, did not discover nor should have discovered by the exercise of reasonable diligence until September, 1973, that with respect to the claims against defendants Robert S. Trippet, Frank E. Sims, Cross & Company, Norman C. Cross, Jr., Kothe & Eagleton, Inc. and Elmer M. Kunkel under section 11 of the 1933 Act, any part of the registration statements for the 1964 through 1972 Programs, including specifically those parts prepared or certified by defendants, Cross & Company, Norman C. Cross, Jr., Kothe & Eagleton, Inc. and Elmer M. Kunkel, misstated or omitted material facts in violation of section 11, the claims asserted under section 11 of the 1933 Act against those defendants by the nine class representatives, both on behalf of themselves and the classes they represent, are not time-barred under section 13 of the 1933 Act because of defendants' fraudulent concealment of plaintiffs' causes of action and the doctrine of equitable tolling.

(3) Based on the jury verdicts (i) against defendants Kunkel and Cross with respect to the negligence claims asserted against them in the individual actions, Case Nos. 74-C-224, 74-C-225, 74-C-226, 74-C-229, 74-C-180 and 74-C-230, and (ii) on the section 11 and the Rule 10b-5 claims asserted in those cases and Case Nos. 74-C-227 and 74-C-228 against defendants Trippet, Cross and

Kunkel, in light of the Court's instructions, such claims are not time-barred by the applicable statutes of limitations.

(4) Alternatively, based both on the jury's findings that defendants Trippet and Kunkel, assisted by other officers of Home-Stake Production Company, intentionally thwarted and defeated the federal courts, the SEC and the IRS in their efforts to administer and enforce the laws of the United States in connection with the offering and sale of Home-Stake programs and on the Court's own hearing and evaluation of the evidence on that subject, including the assistance in that course of conduct rendered by Cross & Company, Norman C. Cross, Jr., Elmer M. Kunkel (as Home-Stake's outside auditor), and Kothe & Eagleton, Inc. by their participation in the preparation and certification of financial statements or legal opinions contained in and the drafting of the registration statements for the various programs, defendants are estopped from raising statute of limitations defenses to the claims asserted against them under section 11 of the 1933 Act, section 10(b) of the 1934 Act and Rule 10b-5 thereunder and common law negligence.

Manuel L. Real, Chief Judge
United States District Court
Central District of California

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 17 1988
Jack C. Silver
U. S. District Court

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIAM BRADFORD INGE; MARY BETH INGE; DORIS ANN SIMON; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; Defendants.	)	CIVIL ACTION NO. 88-C-591-B

ORDER VACATING JUDGMENT OF FORECLOSURE

This matter comes on before the Court on this 17 day of October, 1988, upon the Motion of the Plaintiff, United States of America, for an Order of this Court vacating the Judgment of Foreclosure entered in this case on September 22, 1988. The Court, having considered the motion and the records and files in this case, and being fully advised in the premises, finds that good cause has been shown for the relief sought and that the motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Judgment of Foreclosure entered in this case on September 22, 1988, be, and the same is hereby vacated, set aside and held for naught.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BEAUTY GROW PRODUCTS, INC., a corporation, L. C. "LEE" COBB, and FAYE E. COBB, individuals,

Plaintiffs,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as liquidating agent of the Citizens Bank of Drumright, Oklahoma,

Defendant,

and

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Third Party Plaintiff,

vs.

BEAUTY GROW PRODUCTS, INC., a corporation, L. C. "LEE" COBB, and FAYE E. COBB,

Third Party Defendants.

No. 87-C-995-B

FILED
OCT 17 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

NOW on this 17 day of October, 1988, Plaintiffs' Motion to Dismiss comes on before the Court, and the Court, being fully advised in the premises, finds that said Motion should be granted;

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that the case styled Beauty Grow Products, Inc., a

corporation, L. C. "Lee" Cobb, and Faye E. Cobb, individuals v. Federal Deposit Insurance Corporation in its capacity as liquidating agent of the Citizens Bank of Drumright, Oklahoma, No. 87-C-995-B, is hereby dismissed without prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE